TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 428

C. S. TUTTLE, ALBERT J. PETERSON, ET AL., ETC.,
PETITIONERS,

vs.

SAM HARRIS, J. ROSE AND I. GORDON, PETITIONING CREDITORS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1935.

CERTIORARI GRANTED OCTOBER 21, 1935.

SUPREME COURT OF THE UNITED STATES

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[fols. a-d & 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 59143

In the Matter of GRANADA HOTEL CORPORATION, Debtor

Be It Remembered, that the above-entitled action was commenced by the filing of the following Creditors Petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 14th day of March, 1935.

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

No. 2613-D

In the Matter of GRANADA HOTEL CORPORATION, Debtor

CREDITOR'S PETITION IN PROCEEDINGS FOR THE RELIEF OF DEBTORS UNDER SECTIONS 77A AND 77B OF THE BANKRUPTCY ACT

To the Honorable Judges of the United States District Court for the State of Illinois:

Your petitioners, Sam Harris, J. Rose and I. Gordon, hereby petition the Court and allege:

I

That your petitioners are creditors of the Granada Hotel Corporation, having provable claims, which in the aggregate, are in excess of the value of securities held by them, amount to One Thousand ($1,000.00) Dollars. That the nature and amount of your petitioners' claims are as follows:

That the petitioner Sam Harris, is the owner and holder of Five Hundred ($500.00) Dollars, principal amount of

[fol. 3] the gold bonds executed and issued by the debtor under date of September 1st, 1928, which is in default both as to principal and interest since March 1st, 1934, when they were due and payable.

That the petitioner J. Rose is the owner and holder of Five Hundred ($500.00) Dollars, principal amount of the gold bonds executed and issued by the debtor under date of September 1st, 1928, which is in default both as to principal and interest since March 1st, 1934, when they were due and payable.

That the petitioner, I. Gordon, is the owner and holder of Three Thousand ($3,000.00) Dollars, principal amount of the gold bonds executed and issued by the debtor under date of September 1st, 1928, which is in default both as to principal and interest since March 1st, 1934, when they were due and payable.

II

That the debtor is a corporation which could become a bankrupt under Section 4 of the Act of Congress entitled "An Act to establish a uniform system of Bankruptcy throughout the United States, approved July 1st, 1898, and Acts amendatory and supplementary thereto" and is a corporation which might file a petition under Sections 77A and 77B of said Bankruptcy Act.

That the debtor is a business or commercial corporation organized in pursuance of the laws of the State of Illinois and is not a municipal, insurance, banking, or building and loan corporation, or a railroad corporation, and the present operation of said debtor does not exclude it from the provisions of Section 77B of the said Bankruptcy Act, and said debtor corporation is neither a wage earner nor a person engaged principally in farming or tilling of the soil.

III

That the property of the debtor consists of the following described property, located in the City of Chicago, County of Cook and State of Illinois:

Lots 32 and 33 in Outlot "C" in Wrightwood, in Section 28, Township 40 North, Range 14, East of the Third Principal Meridian, situated in the County of Cook, State of Illinois.

[fol. 4] That in addition thereto, the debtor corporation has certain interests in the following buildings in the City of Chicago, State of Illinois:

Fullerton Plaza Building Corporation
The Parkway Building Corporation
The Lincoln Park Manor Building Corporation
The Arlington Apartment Building Corporation.

That the debtor corporation owns equities in several farms in the State of Indiana, which are known as:

The Bush Farm
The Rust Farm
The Pogue Farm
The L. W. Campbell Farm
The O'Mara Farm.

That it also owns equities in several farms in the State of Michigan, known as:

The Kipp-Holbrook Farm.

That it also owns equities in several farms in the State of Missouri and a large number of equities in Duplexes in Kansas City, Missouri:

400-02 E. Meyer Blvd.
408-10 E. Meyer Blvd.
416-18 E. Meyer Blvd.
4814-16 Wornall Road
503-05 Ward Parkway
509-11 Ward Parkway
515-17 Ward Parkway
521-23 Ward Parkway
527-29 Ward Parkway
533-35 Ward Parkway
4939 Ward Parkway (Residence)
4943 Ward Parkway "
4947 Ward Parkway
Vacant, Lot "A."

IV

That the debtor has had its principal place of business and its principal assets in the State of Illinois and in the Northern District of Illinois, in the six (6) months immedi-

ately preceding the date of this petition, although its assets are scattered throughout the various states aforesaid.

[fol. 5]

V

The nature of the business of the debtor is principally that of owning, managing, operating, renting and leasing farms, residential properties, hotel buildings and other premises in the City of Kansas City, Missouri, and elsewhere in Missouri; in the State of Michigan and in the City of Chicago, State of Illinois.

VI

That the debtor corporation has not filed in this nor any other Court, a petition or answer under Sections 77a and 77b of said Bankruptcy Act and has never filed any petition in bankruptcy and that this Court is one in which said debtor might itself, file a petition under said Act.

VII

That the debtor corporation is unable to meet its debts as they mature.

VIII

That the said debtor is within the jurisdiction of this Court under the provisions of said Bankruptcy Act, That heretofore William A. Thuma brought a suit in the Superior Court of Cook County, Illinois, Number 519151, against the said Granada Hotel Corporation, debtor, and other parties, in pursuance of which the Chicago Title and Trust Company was named as Receiver of the assets and property of the debtor, which proceedings are still pending in said Superior Court.

IX

That so far as your petitioners have been able to ascertain, no other proceedings, in law or in equity, or in any other Court, have been instituted in relation to said debtor, with the view to the appointment of trustees or receivers, either on behalf of the debtor or its creditors.

X

That your petitioners propose that the debtor corporation shall effect a reorganization under and pursuant to

[fol. 6] Section 77a and 77b of the Bankruptcy Act, a plan for which said reorganization, your petitioners have and are ready, willing and able to submit to the Court in the due course of these proceedings.

XI

This petition is made and presented to this Court in good faith, is not collusive nor for the purpose of obtaining any preference or improper advantage of any one creditor over any other.

XII

On information and belief, your petitioners allege that certain creditors of said debtor and officials of said debtor corporation, entered into a plan, scheme, design and conspiracy to defraud the bondholders (including your petitioners) of this corporation. That pursuant to said conspiracy to defraud, that said creditors and officials have wrongfully and illegally diverted and appropriated monies and profits to their own advantage and preferment which rightfully belonged and belong to your petitioners and other similarly situated. That irreparable loss will ensue to your petitioners unless they and other creditors of said debtor be given the fair and equitable relief and remedies given by virtue of Sections 77a and 77b of the Bankruptcy Act, as amended, in pursuance of which this petition is filed, and your petitioners pray that this court compel said debtor and said conspirators to make full and complete disclosure under the discovery powers of this Court, of their machinations and overt acts in their manipulation and exploitation or the business of said debtor to the disparagement and detriment of all creditors.

XIII

Your petitioners therefor request and petition the Court as follows:

(a) That service of this petition with subpœna may be made upon said debtor as provided by said Bankruptcy Act, and that the debtor be required to make answer to said petition within ten (10) days after service upon it.

(b) That this petition be approved and proceedings be had in this Court in pursuance of said Sections 77a and 77b of the Bankruptcy Act.

[fol. 7] (c) That a trustee or trustees of the debtor's estate be appointed in pursuance of said Act. That said trustees be required to give such notice to the creditors and stockholders of the debtor as the Court shall direct of a hearing to be had as provided in said Act.

(d) That the amount of the bonds of the trustees be fixed and upon filing of such bonds, the trustees exercise such supervision and control of the property of the debtor as the Court shall order and direct. That said trustees be empowered to manage the continuation and operation of the business of the debtor in such manner as the Court shall direct. That in the handling of the business of the debtor the trustees shall be authorized to issue certificates for cash, property or for any lawful purpose, all in pursuance of the direction of the Court.

(e) That said debtor and said trustees be required to prepare a list of all known bondholders and creditors of, or payments against, the debtor corporation or its property and the amounts and character of their debts, claims, securities and liens, if any they have, together with the post office address or place of business of each creditor or claimant, and also a list of the stockholders of each class of the debtor corporation, with the last known post office address or place of business of each, which information shall be open to the inspection of any creditor or stockholder of the debtor corporation, upon application to the trustees.

(f) That the order of this Court be entered, directing the rejection of contracts of the debtor, executory in whole or in part, which are not beneficial to the estate of the debtor.

(g) That a reasonable time be fixed by order of the Court within which the claims and interest of the bondholders, creditors and stockholders may be filed and after which no such claim or interest may participate in any plan except on order for cause shown.

(h) That an order be entered herein staying all proceedings of every character and in every Court which may now be pending against the debtor and enjoining the commence-

ment or continuation of any suits or proceedings of any character against the debtor, until the final disposition of this matter and upon notice and for cause shown enjoining and staying the commencement or continuation of any judicial proceedings to enforce any lien upon the estate of the debtor corporation or any part thereof.

(i) That your petitioners be permitted to submit one or [fol. 8] more plans for reorganization of the business of the debtor including any disposition to be made of its assets and properties pursuant to Sections 77a and 77b of said Bankruptcy Act, and that reasonable time be given to your petitioners in which to submit such plan. That after hearing such objections as may be made to any plan submitted by your petitioners, that the Court shall confirm the plan, if satisfied that it complies with said Sections 77a and 77b of said Bankruptcy Act.

(j) That your petitioners have such other, further and equitable relief as to the Court may seem just and proper in the premises.

Dated the 13th day of December, A. D. 1934.

Sam Harris, Joe Rose, I. Gordon, Petitioners. Frank E. McAllister, Attorney for Petitioners.

Duly sworn to by Sam Harris et al. Jurat omitted in printing.

[fol. 9] IN UNITED STATES DISTRICT COURT

(Caption—2613D)

SUBPŒNA—Issued Dec. 21, 1934

To Granada Hotel Corporation, of Chicago, Cook County and the Northern District of Illinois Greeting:

For certain causes offered before the District Court of the United States of America within and for the Eastern District of Illinois, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you shall answer within ten days, after the service of this subpœna and a copy of the petition filed by Sam Harris, Joe Rose and I. Gordon, (for

certain relief under Sections 77a and 77b of the Bankruptcy Act of 1898, as amended and supplemented) in our said Court praying, and to do further and receive that which our said District Court shall consider in this behalf. And this you are in nowise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable Walter C. Lindley, Judge of said Court, and the seal thereof, at Danville in said District, this 21st day of December A. D. 1934.

D. H. Reed, Clerk, by Marie Burnett, Deputy Clerk.
(Seal.)

Served this writ on the within named Granada Hotel Corporation, a corporation, by delivering a copy thereof to Roger W. Walters, Assistant Secretary an agent of said corporation this 28th day of December 1934. The President of said corporation not found in my District.

Wm. H. McDonnell, U. S. Marshal, by Charles A. Sintak.

Marshal's Fees:

1 service	$2.00
3 miles	.24
Total	$2.24

[fol. 10] In United States District Court

(Caption—2613D)

Notice of Motion—Filed Jan. 18, 1935

To George U. Nichols, Vice-President of the Granada Hotel Corporation, 2015 Lincoln Avenue, Chicago, Illinois:

Please Take Notice that on Friday the 18th day of January, A. D. 1935, at the opening of Court in the forenoon or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Walter C. Lindley, sitting at Chicago, Illinois, in the Federal Building, Adams and Clark Streets, and then and there move the Court for:—

1. For an Order defaulting the Debtor Corporation for failure to file an answer;

2. For an Order appointing a temporary trustee to take possession of all the property of the Debtor Corporation;

3. For an injunction restraining the further prosecution of the case of William A. Thuma, Complainant vs. Granada Hotel Corporation, et al. Defendants and Central Republic Trust Company, etc., Cross-Complainant vs. Granada Hotel Corporation et al., Cross-Defendants, No. 519151 in the Superior Court of Cook County, Illinois;

4. For an Order setting the date for hearing upon the question of the permanent appointment of the trustee or in the alternative restoring the Debtor in possession;

5. For an Order setting the date for the proposal and submission of Plans and further date for the hearing of the Plan or Plans submitted and objection thereto;

6. For the entry of an Order approving the Petition of the Petitioning Creditors as being properly filed and in good faith;

and for such further Orders as to the Court may seem meet; at which time and place you may appear if you so see fit.

Yours etc., Frank E. McAllister, 4215—One No. La Salle St., Chicago, Ill., Attorney for Petitioning Creditors.

[fol. 11] Received a copy of the above notice this 17th day of January A. D. 1935.

G. U. Nichols.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

(Caption—2613D)

INTERVENING PETITION OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE—Filed Jan. 22, 1935

Now comes City National Bank and Trust Company of Chicago, and leave of court being first had and obtained

and for the purpose of its special and limited appearance heretofore entered herein, represents:

1. That on the 29th day of April, 1929, Granada Hotel Corporation was the owner of the real estate and premises described as

Lots 32 and 33 of Out Lot "C' in Wrightwood, a Subdivision of the Southwest Quarter of Section 28, Township 49 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois,

among other things subject to a first mortgage bond issue of $525,000 secured by trust deed to Chicago Trust Company, as Trustee, recorded in the Recorder's Office of Cook County, Illinois, October 1, 1928, as Document 10161996; that the apartments in the improvement on said premises were furnished and that the said improvement was operated as an apartment hotel, but that the interest of the said corporation in and to the said furniture and equipment was subject to the lien of a chattel mortgage held by Albert Pick & Company.

2. That on April 29, 1929, Granada Hotel Corporation, by its warranty deed, conveyed the said real estate and premises to Granada Apartments, Inc., which said deed was [fol. 12] duly delivered and recorded in the Recorder's Office of Cook County, Illinois, at or about the date thereof, and that on April 29, 1929, Granada Hotel Corporation assigned and transferred to Granada Apartments, Inc. all of its right, title and interest in and to all property of every kind whatsoever held or owned by it or in which it might have any right, title, interest or claim.

3. That on April 29, 1929 as aforesaid, Granada Hotel Corporation disposed of all of its assets and property and that thereafter on the 7th day of May, 1930, it was dissolved by decree of the Superior Court of Cook County, Illinois, entered in cause there pending as No. 50985, at the instance of the People of the State of Illinois in an action brought through the Attorney General for the State of Illinois, and that said decree has never been reversed, vacated or modified in any way.

4. That on the 10th day of June, 1930, proceedings for the partial foreclosure of a mortgage upon the above real

estate and premises were filed in the Superior Court of Cook County, Illinois, in cause No. 519151, and Chicago Title and Trust Company was appointed Receiver in said proceedings; that thereafter Central Republic Trust Company, as successor by consolidation to said Chicago Trust Company under said Document 10161996, filed its cross-bill of complaint for the foreclosure of the first mortgage, which proceedings are still pending and undetermined.

5. That on June 24, 1930, an order was entered in said cause No. 519151 on the petition of Albert Pick & Company, directing Chicago Title and Trust Company, Receiver, to surrender to Albert Pick & Company any and all personal property belonging to Granada Hotel Corporation, and that the said Receiver did surrender said personal property.

6. That before and after the entry of the order requiring the surrender of said personal property, Granada Apartments, Inc. purchased sufficient personal property fully to refurnish said apartment hotel and that Granada Apartments, Inc. and others, by chattel mortgage, transferred to Central Republic Trust Company all their right, title and interest in the new personal property as further security for the payment of indebtedness of Granada Apartments, Inc. and as further security for the payment of the bonds secured by said Document 10161996.

7. That thereupon Central Republic Trust Company filed its supplemental cross-bill in the said state court proceedings for the foreclosure not only of said Document 10161996, [fol. 13] but also of its said chattel mortgage aforesaid, and that said proceedings are still pending and undetermined.

8. That on the 16th day of March, 1934, by order of the Superior Court of Cook County, Chicago Title and Trust Company, as such Receiver, was directed to and did surrende possession of said real estate and personal property to Central Republic Trust Company, as Trustee, which took possession thereof and held it until January 3, 1935 under the terms of its trust deed and as mortgagee in possession after condition broken.

9. That on January 3, 1935, by order of said Superior Court of Cook County entered in the said proceeding, City National Bank and Trust Company of Chicago, your peti-

tioner herein, was appointed Successor Trustee, and as such Successor Trustee on January 3, 1935 took possession from Central Republic Trust Company, and has since been, and is now, in possession of said property.

10. That on April 24, 1934, Chicago Title and Trust Company presented its final report and account in the said state court proceedings, which report and account were approved and the said Receiver was discharged by order entered that day in said proceedings.

11. That by reason of the premises, your petitioner avers that the debtor corporation has no right, title or interest in and to said real estate or personal property, and further avers that there is in existence no corporation known as Granada Hotel Corporation.

12. That on the 18th day of January, 1935, the petitioning creditors herein applied for an order appointing a Temporary Trustee to take possession of the property of the debtor corporation described in the original petition herein and for an injunction restraining the further prosecution of said state court cause No. 519151 and for an order upon the question of the permanent possession of the Trustee, or in the alternative, restoring the debtor to possession.

13. Your petitioner asserts a claim adverse to that of the debtor corporation, the petitioning creditors and any Trustee which may be appointed herein, and avers that it has not consented to an adjudication of the title to said real estate or said personal property or to the possession thereof by this court in a summary proceeding; that a controversy exists with reference to said real estate and personal property and that this court is without jurisdiction or right in [fol. 14] law to summarily order any Trustee herein to take possession of said real estate or said personal property, and without jurisdiction to restrain the prosecution of said proceedings cause No. 519151 which relate to property in which the debtor corporation has no right, title, interest or claim.

14. That the taking of possession of said real estate or personal property or any jurisdiction thereof by this court in view of the facts herein shown would be a violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, your petitioner asserts an adverse claim and controversy in reference to said real estate and personal property held adversely as aforesaid and that the motion of the petitioning creditors herein for an order appointing a Temporary Trustee to take possession of the said property, for an injunction restraining the prosecution of said cause No. 519151 and for an order setting the date for hearing upon the question of the permanent appointment of the Trustee, or in the alternative, restoring the debtor to possession, should be denied.

City National Bank and Trust Company of Chicago, by Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Its Attorneys. Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for said Intervening Petitioner.

Duly sworn to by Vincent O'Brien. Jurat omitted in printing.

[fol. 15] IN UNITED STATES DISTRICT COURT

(Caption—2613D)

ANSWER OF C. S. TUTTLE, ET AL., TO THE ORIGINAL PETITION OF SAM HARRIS, ET AL.—Filed Jan. 22, 1935

Now come C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, and for answer to the origina petition filed herein say:

1. That there have been deposited with them under the terms of said deposit agreement first mortgage bonds of Granada Hotel Corporation in excess of $300,000. principal amount, and that under and by virtue of the terms and provisions of the said agreement full and complete title, legal and equitable, in and to the said bonds has been and is vested in these respondents, by reason of which they are creditors of Granada Hotel Corporation having provable claims which they aver in the aggregate are in excess of the value of the securities held by them to the sum of One Thousand Dollars ($1,000) or over.

2. They are not informed as to the averments set forth in paragraphs numbered 1 of the said petition, but they admit the averments contained in paragraph 2 thereof.

3. They deny that the said debtor is within the jurisdiction of the court under the provisions of the Bankruptcy Act, but admit that there is pending in the Superior Court of Cook County the said cause there numbered 519151 described in paragraph 8 of the said petition; they admit that during the pendency of said proceeding Chicago Title and Trust Company was named Receiver therein, but aver that at the time of the filing of the petition herein Chicago Title and Trust Company was not acting as Receiver, and further [fol. 16] aver that on the 16th day of March, 1934 an order was entered in said Cause No. 519151 directing said Chicago Title and Trust Company, as Receiver, forthwith to surrender to Central Republic Trust Company, as Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, all property in its possession as such Receiver, and further aver that the said trust deed Document 10161996 is the trust deed securing the issue of first mortgage bonds hereinabove mentioned. They further aver that the said Receiver did, pursuant to said order, so surrender possession to said Central Republic Trust Company, as Trustee, and that said Trustee held possession as mortgagee in possession after condition broken until the 3rd day of January, 1935, on which date City National Bank and Trust Company of Chicago was appointed Successor Trustee to Central Republic Trust Company by order of said Superior Court of Cook County, Illinois entered in said Cause 519151, and that on the 3rd day of January, 1935 possession of the property involved in the said proceeding numbered 519151 was surrendered to, and is now held by, City National Bank and Trust Company of Chicago as such Successor Trustee and as mortgagee in possession after condition broken.

4. Your respondents further aver that on the 24th day of April, 1934 the final account and report of Chicago Title and Trust Company as such Receiver was filed in said Cause 519151 and approved by the court therein, and that the said Receiver was by order of court entered on the date last aforesaid duly discharged.

Wherefore, and from the facts appearing in the original petition herein, these respondents say that the petitioners are without right to file their said petition, that the court is without jurisdiction to entertain it, that it should not be approved as properly filed, and should be dismissed.

C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, E. A. Kilmer, by Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Their Attorneys. Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for said Respondents.

[fol. 17] *Duly sworn to by Vincent O'Brien. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

(Caption—2613D)

PETITION OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE, FOR LEAVE TO INTERVENE—Filed Jan. 22, 1935

Now comes City National Bank and Trust Company of Chicago, as Successor Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996, by its attorneys, Don Kenneth Jones and Defrees, Buckingham, Jones & Hoffman, and pursuant to its special and limited appearance heretofore entered herein and without waiving or intending to waive its objections to the jurisdiction of the court or in anywise the benefit of the said special and limited appearance, but to enable it to show to the court that the property hereinafter referred to is not and has not since April 29, 1929 been the property of the debtor herein but has since that time been owned and possessed by others and adversely to the debtor herein, petitions the court for leave to intervene herein, and says:

1. That the said Document 10161996 is a trust deed in [fol. 18] the nature of a mortgage securing first mortgage bonds upon the property involved herein and described as

Lots 32 and 33 in Outlot "C" in Wrightwood, a Subdivision of the Southwest quarter of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in the County of Cook, and State of Illinois,

and that your petitioner's interest is as Successor Trustee under the said Document.

2. That as such Successor Trustee it is in possession of said property and has been since January 3, 1935 as mortgagee in possession after condition broken.

3. That it and its predecessor in trust acquired such possession by order of the Superior Court of Cook County entered March 16, 1934 in cause pending in the Superior Court of Cook County, Illinois as number 519151, and that in and by the said order Chicago Title and Trust Company, the then acting Receiver in said cause last aforesaid, was directed to surrender possession of the said property to your petitioner's predecessor in trust, and that it did so surrender such possession and was discharged as such Receiver in said cause on the 24th day of April, 1934.

4. That by warranty deed dated April 29, 1929 Granada Hotel Corporation conveyed the above described real estate to Granada Apartments, Inc., an Illinois corporation, which latter corporation has owned the said premises ever since.

5. That your petitioner as such Trustee is likewise in possession of all of the personal property and equipment used in and about the improvement on the above described premises and took such possession more than four months preceding the filing of the petition herein, and that it holds such possession as chattel mortgagee, and that the debtor herein never had any right, title, interest, or claim in, to or upon the said personal property and equipment, all of which your petitioner avers was purchased by other parties in interest long after the debtor herein had parted with title to the said real estate.

Wherefore, your petitioner, for the purposes aforesaid, prays that it be granted leave to intervene and to file instanter its intervening petition herewith presented.

City National Bank and Trust Company of Chicago, as Successor Trustee, by Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Its Attorneys. Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for said Petitioner.

[fol. 19] *Duly sworn to by Vincent O'Brien. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

(Caption—2613D)

ORDER GRANTING LEAVE TO FILE ANSWER—Entered Jan. 22, 1935

On motion of Don Kenneth Jones, attorney for C. S. Tuttle and others;

It Is Ordered that leave be, and it is hereby, granted C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, to file instanter their answer to the original petition herein.

Enter.

Walter C. Lindley, Judge.

Dated January 22, 1935.

[fol. 20] IN UNITED STATES DISTRICT COURT

(Caption—2613D)

ORDER GRANTING LEAVE TO INTERVENE—Entered Jan. 22, 1935

This matter coming on to be heard upon the petition of City National Bank and Trust Company of Chicago, as Successor Trustee, for leave to intervene and to file its intervening petition in pursuance of its special and limited appearance heretofore entered herein and for the purposes thereof;

It Is Ordered that leave be, and it is hereby, given City National Bank and Trust Company of Chicago, as Successor Trustee, to intervene herein and to file instanter its intervening petition now submitted in open court.

Enter.

Walter C. Lindley, Judge.

Dated January 22, 1935.

IN UNITED STATES DISTRICT COURT

(Caption—2613D)

ORDER THAT DEBTOR BE DEFAULTED, ETC.—Jan. 22, 1935

This cause coming on to be heard upon the motion of Frank E. McAllister, attorney for the petitioning creditors in the above entitled cause, and due notice having been [fol. 21] given all parties in interest, and the court having heard the arguments of counsel and being fully advised in the premises, doth find:

1. That on the 21st day of December 1934 an involuntary petition for reorganization of the debtor corporation was filed by Sam Harris, J. Rose and I. Gordon;

2. That on towit, the 28th day of December 1934 a copy of the subpoena and petition was served on the debtor corporation by the United States Marshall by personally serving and leaving a copy of the same with Roger W. Walters, Assistant Secretary of the debtor corporation and that more than ten (10) days have elapsed since said service and that no answer has been filed thereto by the debtor corporation;

3. That on towit, the 17th day of January 1935 a notice was served personally upon George U. Nichols, Vice-President of the Granada Hotel Corporation, that on the 18th day of January 1935, Frank E. McAllister, attorney for the petitioning creditors would appear before the Honorable Walter C. Lindley, sitting at Chicago, Illinois in the Federal Building Clark and Adams Streets, and then and there move the Court for an Order defaulting the debtor corporation for failure to file an answer to the petition of Sam Harris, J. Rose and I. Gordon.

It Is Therefore Ordered Adjudged and Decreed that the debtor in the above entitled cause, Granada Hotel Corporation, be and they are hereby defaulted for their failure to file an answer to the petition of Sam Harris, J. Rose and I. Gordon.

Enter.

Walter C. Lindley, Judge.

Dated Chicago, Illinois, January 22nd, 1935.

[File endorsement omitted.]

[fol. 22] In United States District Court

(Caption—2613D)

Special and Limited Appearance—Filed Jan. 22, 1935

Now comes City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under trust deed recorded in the Recorder's Office of Cook County, Illinois as Document 10161996, by its attorneys, Don Kenneth Jones and Defrees, Buckingham, Jones & Hoffman, and enters its special and limited appearance herein for the sole and only purpose of contesting the jurisdiction of this court over the property hereinafter referred to; for the purpose of questioning the jurisdiction of the court to appoint a Trustee herein to take possession of all or any of the property described in the original petition herein; for the purpose of questioning the jurisdiction of the court to restore to the debtor herein possession of all or any of said property, and for the purpose of contesting the jurisdiction of the court to order the surrender of said property to this court, to any trustee herein, or to the debtor herein, by a summary proceeding. It contests the jurisdiction on the ground that the debtor corporation has not held title to the property described as

Lots 32 and 33 of Outlot "C" in Wrightwood, a Subdivision of the Southwest quarter of Section 28, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois,

since April 29, 1929, and that it never did have title or any interest of any kind whatsoever in the personal property and equipment used in connection with the said real estate and located in the improvement thereon, and that said last described real estate and said personal property and equipment are both owned and possessed adversely to the alleged debtor herein.

Dated January 22, 1935.

Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for City National Bank and Trust Company of Chicago, as Trustee aforesaid.

[fol. 23] IN UNITED STATES DISTRICT COURT

(Caption—2613 and 59143)

Transcript of Proceedings—Filed April 5, 1935

Before Lindley, J., January 22, 1935

IN UNITED STATES DISTRICT COURT

(Caption—2613)

TRANSCRIPT OF PROCEEDINGS

The following is a transcript of the proceedings had and evidence taken in the above entitled cause before Hon. Walter C. Lindley, one of the Judges of said Court (sitting in the United States Court House, at Chicago, in the Northern District of Illinois, Eastern Division) beginning at the hour of 10:00 o'clock A. M. on the 22d day of January, A. D. 1935.

Present: Frank E. McAllister, Esq., Morris Schaeffer, Esq., and Thomas V. Sullivan, Esq., appearing for Petitioners;

Messrs. Defrees, Buckingham, Jones & Hoffman, represented by Don Kenneth Jones, Esq., and Vincent O'Brien, Esq., appearing for C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, as members of a Committee, for City National Bank and Trust Companies of Chicago, Trustee, upon special and limited appearance.

COLLOQUY

Mr. McAllister: This is a case, your Honor, on which we came in Friday, and the Court ordered the debtor defaulted. There is no appearance on behalf of any one and we have an order of default and the petitioning creditors are ready to prove up our good faith.

The Court: Let them be sworn, one of them, at least.

Mr. Jones: If your Honor please, before we enter upon that, I represent a committee for $300,000.00 of the bond [fol. 24] issue, and I am asking leave to file an answer on behalf of that committee. That committee, under that particular deposit, holds title to the bonds, and I have just

listened to what your Honor has had to say in the other case.

In the Cisco case in the United States Supreme Court it was held they were proper parties in an equity proceeding. I am familiar with that. And the Supreme Court of Illinois has just ruled that they have title to bonds, and are bondholders. Now the purpose of my asking leave to file this answer is to attack the jurisdiction of the court, not upon the grounds that have been so often advanced, and I am familiar with your Honor's ruling upon these particular problems; but upon this ground, and whether I am given leave to file the answer or not, I take it that there is one thing there is firmly settled in federal jurisprudence, that whenever the court's attention is directed to the fact that it is without jurisdiction, through defect in pleadings, or otherwise, that it always notices that fact, even upon its own motion.

The Court: It is its duty.

Mr. Jones: Now the petition, which is at bar, does not allege an act of bankruptcy on the part of the corporation. It does allege that there was a receiver, and that there is a receiver in an equity case, a foreclosure in the state court. By the answer, which is verified, and which I tender to your Honor, it appears that at the time of the filing of this petition under 77B there was no equity receivership in the state court. While it was true that a year or two years ago an equity receiver had been appointed, yet over a year or approximately one year ago that receiver was discharged. And I offer to prove that by certified copies of the court records in the very case referred to in this petition. There is no equity receivership pending of the type referred to in 77B, so that without either an equity receivership at the time this petition was filed, or an act of bankruptcy alleged in the petition itself, the court, as I conceive it, is without jurisdiction.

Therefore, I would like to call those facts to the attention of the Court by the answer before we proceed with the other witnesses, and ask leave to file the verified answer, and have here to exhibit to the Court certified copies of the orders of the state court in 1934 prior to this petition, discharging the receiver in that case.

[fol. 25] The Court: What became of the property in the foreclosure case?

Mr. Jones: The foreclosure case is still pending. The receiver was discharged, and the trustee under the first mortgage bond issue took possession of the property, and is in possession today. But there is no equity receivership, and there is no receiver for this corporation or of this corporation's property. And that is jurisdictional, as I read 77B.

The Court: Yes, if we agreed upon what is the meaning of the term receivership. What have you to say?

Mr. McAllister: That receivership proceeding is still pending, it is still a pending equity proceeding.

The Court: Aren't there some court decisions to that effect?

Mr. Jones: I know of none.

The Court: I have read some, somewhere, that such a situation is within the meaning of the words, an equity receivership, in the sense they are used.

Mr. Jones: There can't be an equity receivership.

The Court: Suppose you call the fiduciary a guardian or an administrator, he is in by order of the state court as a trustee.

Mr. Jones: We are not in by order of the state court as trustee.

The Court: But you are a party, you are the complainant there.

Mr. Jones: That is it.

The Court: And as the complainant you have taken possession, and you are subject to that court's order.

Mr. Jones: Sure.

The Court: And you can't do anything with that property that that court disapproves of. You are as much subject to the jurisdiction of that court as if you were called a receiver.

Mr. Jones: We are subject to that court's jurisdiction, but outside of that, under all rules of real estate in Illinois a trustee, where condition is broken, can go in and take possession.

The Court: Certainly, he may maintain ejectment.

Mr. Jones: Any one of the three remedies. But we have no equity receivership.

The Court: Well, that is a question.

Mr. Schaeffer: The bill prayed for the appointment of a [fol. 26] receiver, and the receiver was appointed. It indi-

cates the character of the proceeding. The mere fact that they saw fit to take out a receiver and substitute a trustee, under the order of the court, don't change it from an equity receivership proceeding to something else.

The Court: I am perfectly willing to give you, Mr. Jones, such record as you want to make on the subject, because these questions are new and not well settled. But I have reasoned this way, that if a trustee under a bond issue has filed a suit at law to foreclose upon its bond, has gone into possession of the property, either through a receiver appointed by that court, or taken possession as trustee under the terms of the mortgage or trust deed, and the foreclosure proceeding is still pending, Congress meant that that situation should be taken care of. That was the intent,—what Congress had in mind.

Now I may be all wrong, but that is the way I have reasoned to my own satisfaction, and if I am wrong, I want the Court of Appeals to tell me so, and I would be very happy to have you get your record in such shape that the matter may be presented there.

Mr. Jones: I have prepared a draft order which gives me leave to file the answer.

Mr. McAllister: We object to the answer being filed at this time, on the grounds that the Committee which counsel represents has no standing at this time to controvert the petition. The debtor is the sole and only party under the Act, or three creditors possessing the requisite amount of bonds. The Bondholders' Committee, as such, has no standing at this time, if the Court please, to controvert the petition.

Mr. Jones: It would be a very narrow construction that would deny any one the right to call attention of the court——

The Court: I think anybody may call those facts to the court's attention.

Mr. McAllister: This takes them to be a party to the proceeding, and under the Act they are not proper parties.

Mr. Schaeffer: That is not a matter of offering affirmatively on the face of the petition, that is a matter of affirmative proof.

The Court: Gentlemen, this answer purports to raise only the question of jurisdiction of this court under the particular facts that Mr. Jones has stated, and that is the only point that it does raise, as I understand it.

[fol. 27] Mr. Jones: Yes.

The Court: I agree with you that Congress evidently had in mind upon the question of good faith, filing in good faith, they would permit certain people who are directly interested, certain designated people who are interested in the res of the property to be heard and that it would be improper to deny them the right to be heard; that they may appear, and contest the good faith of the petition, and that by the exclusion of all others, Congress had in mind that upon that subject matter the court should hear only such designated parties. It has been by position that in such situation and after, under that procedure, the petition shall have been approved, then the Bondholders' Committee, trustee, or other parties in interest may appear by way of intervention for the purpose of calling to the court's attention all matters that may be proper, in the disposition of the contentions of the parties or the protection of the various rights and interests in the property, in subordination of the original proceedings.

Now this application is for leave to file an answer which submits to the court just one question, that is, whether,—when a trustee has filed a suit to foreclose and a receiver has been appointed to take possession of the property and has held possession for some time, and the trustee under the trust deed has been put in possession under the terms of the trust deed and the receiver discharged,—whether the foreclosure suit is still pending. The trustee under the trust deed is still in possession of the property. Whether in such case, that kind of a case is within the meaning of the words "equity receivership," as used in the Statute. Now that raises a question of construction of the Act, and a determination of the court's jurisdiction.

I will allow the answer for that purpose.

Mr. Jones: I will offer in evidence, as part of the answer, if the Court please——

The Court: Wait a minute, I want to hear the evidence upon this petition first. I mean the evidence upon the petition; petitioners have the burden of proof.

Mr. Jones: Very well, your Honor.

The Court: I don't understand that there is any contest about it, but I want to be sure of the good faith in filing the petition.

Mr. Schaeffer: The only thing, I was going to invite your Honor's attention to that. Three creditors have the right to come in and file an answer controverting the petition.

[fol. 28] The Court: The proper procedure for the trustee is to file after the petition has been approved, an intervening petition to set up these facts and to ask the court to refrain from taking jurisdiction of that property, as property not within the meaning of the Act. But after all, it is a matter of choice of remedies, and I am not very meticulous about that.

Call your witnesses.

Isidore Gordon, called as a witness in behalf of the Petitioners, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Sullivan:

Q. What is your name?
A. Isidore Gordon.
Q. Where do you reside?
A. 3402 Harrison Street.
Q. Mr. Gordon, did you purchase bonds of the Granada Hotel Corporation?
A. Yes.
Q. In what amount?
A. Three thousand.
Q. $3,000.00?
A. Yes.
Q. Handing you a series of bonds, Granada Hotel Corporation bonds, are those the bonds that you bought (handing documents to witness)?
A. Yes, sir.
Q. And are you now the owner and holder of them?
A. Yes, sir.
Q. Did you buy them for investment purposes?
A. I did, sir.
Q. And having bought them for investment purposes you have held them for that purpose?
A. Yes.
Q. Have the bonds defaulted?
A. I know it now.
Q. Sir?

A. I know it now.

Q. You know that the bonds have defaulted?

A. Yes.

[fol. 29] Q. And you know the interest and principal has not been paid?

A. Yes, sir.

Q. And you signed this petition?

A. Yes, sir.

Q. Under 77B, for the purpose of reorganizing this corporation?

A. Yes, sir.

Q. And are you sincere in your belief that it would be beneficial to the bondholders to have this corporation reorganized in this court?

A. I actually believe it.

Mr. Sullivan: That is all.

The Court:

Q. What is your business, Mr. Gordon?

A. I have a paint store, and also painting and decorating.

The Court:

Q. Do you know why this proceeding was filed in the Eastern District of Illinois, how did you determine that?

A. I left it to the counsel.

The Court:

Q. Did you discuss that proposition with them?

A. I discussed in the way in which I have more faith in the federal court than in the state.

The Court:

Q. It appears this proceeding was instituted in the Eastern District, instead of the Northern District. Do you know why that was done?

A. No.

Mr. Sullivan:

Q. You do know this corporation owns property other places than in the City of Chicago?

A. Yes, sir.

Q. You know that they own property in Kansas City, and some in Michigan?
A. Yes, sir.

The Court: The same corporation?
Mr. Sullivan: The same corporation.

The Court:

Q. What is this property here?
A. A hotel.

The Court:

Q. Where is it located?
A. I never was there.

The Court:

Q. You have not seen it?
A. No.

The Court:

Q. You don't know the size of it?
A. No.

The Court:

Q. Nor the total of the issue?
[fol. 30] A. No, sir.

The Court: Do you wish to inquire?
Mr. Jones: I do, but I have no right to.
The Court: You have the right to ask him anything you want to about the state proceedings.

Cross-examination.

By Mr. Jones:

Q. When did you buy your bonds?
A. 1931.
Q. Who did you buy them from?
A. I got it from a general contractor.
Q. A general contractor?
A. Yes.
Q. Do you remember his name?
A. I believe his name is Korshak.

The Court:

Q. Was he a man that built the hotel?
A. No, I have been doing work for him.

Mr. Jones:

Q. Where does he live?
A. He used to live on Douglas Boulevard.
Q. How long since you have seen him?
A. Oh, several, about a couple years.
Q. Whereabouts did he live on Douglas Boulevard?
A. Somewheres around 3600 block.
Q. Do you remember the street number?
A. I do not.
Q. And where did you work for him?
A. I done all different work for him, not any one job, but several places.
Q. Did you pay to him any money for the bonds?
A. The amount owed me, and he gave me that for the work I have done.
Q. How much did he owe you?
A. Somewheres around four thousand or over four thousand.
Q. And you settled your account with him?
A. Gave me a certain amount cash.
Q. How much?
A. Oh, about twelve hundred or fifteen hundred dollars.

Mr. Jones: That is all.
Mr. Sullivan: That is all.

[fol. 31] Joseph Rose, called as a witness in behalf of the Petitioners having been first duly sworn, testified as follows:

Direct examination.

By Mr. Sullivan:

Q. What is your name?
A. Joseph Rose.
Q. Where do you live?
A. 1322 South Kildare.
Q. What is your business?

A. Plumbing contractor.

Q. Do you know, did you purchase bonds of the Granada Hotel corporation?

A. Yes, I did.

Q. I am showing you these two bonds, and I will ask you if those are the two bonds you purchased (handing documents to witness)?

A. Those are the ones.

Q. How much is that?

A. $500.00.

Q. When did you buy it?

A. When did I buy it? In 1931.

Q. From whom?

A. From a fellow on La Salle, Cody.

Q. How much did you pay for it?

A. A little over five hundred dollars, 505 or 506 dollars.

The Court: Is that a bond house?

Mr. Sullivan: The Cody Trust Company underwrite the issue, and sold the bonds, yes.

Q. Did you sign the petition in this case for the purpose of bringing this under Section 77B of the Bankruptcy Act?

A. (Witness nods his head.)

The Court: Don't nod your head, say "yes" or "no."

A. Yes.

Mr. Sullivan:

Q. And you felt that it was for the best interest of the bondholders to have this action brought in this court?

A. Yes.

Q. And you sincerely feel that this property might be reorganized for the benefit of the bondholders?

A. Yes.

Mr. Sullivan: That is all.

The Court: Any examination of this witness?

[fol. 32] Mr. Jones: No, your Honor.

The Court:

Q. Have you ever seen the hotel?

A. No, I did not.

The Court:

Q. You did not discuss with counsel the question of the District this proceeding should be filled in?

A. Well, I did, you know, I didn't want it to go over; I wanted it to be brought in the federal court.

Mr. Sullivan:

Q. The question is whether to bring the case here or down at Danville. You did discuss in our office the question of whether they owned property here and in Kansas City?

A. I did discuss that.

Mr. Sullivan: That is all.

SAM HARRIS, called as a witness in behalf of the Petitioners, having been first duly sworn, testified as follows:

Direst examination.

By Mr. Sullivan:

Q. What is your name?

A. Sam Harris.

Q. Where do you live?

A. 3235 Lexington Street.

Q. What is your business?

A. Painting.

Q. Painting contractor?

A. Yes.

Q. Did you purchase a bond of the Granada Hotel Corporation?

A. Yes, sir.

Q. I am showing you Bond No. D379 (handing document to witness).

A. Yes, sir, that is it.

Q. Is that the bond you purchased?

A. Yes, sir.

Q. How much did you pay for it?

A. $500.00, and afterwards I bought it they said there was interest on it, I think $3.50 or $4.50.

Q. Slightly over $500?

A. Yes, I paid.

Q. And you have been the owner and holder of it ever since?

A. Yes.

[fol. 33] Q. And you know it is in default, has not paid a cent of interest or principal?

A. Sure, I was there for interest, and I couldn't get it.

Q. You went for your interest, and couldn't get it?

A. Yes.

Q. Did you sign this petition?

A. Yes, sir.

Q. For the purpose of having it reorganized in the federal court under Section 77B?

A. Yes.

Q. Do you honestly feel it is for the best interest of the creditors to do so?

A. Yes.

Q. Do you sincerely believe it can be reorganized for the benefit of creditors?

A. I do.

Q. You talked to me in our office, didn't you, before you signed it?

A. Yes, sir.

Q. Did you ever have any talk about whether they owned other property, other than this hotel?

A. I didn't remember that, I asked that I would like to get my money—you remember that.

Q. Well, but was there any talk about where to file it?

A. No, I don't remember that.

Q. You don't remember that.

A. No, I don't remember that.

Mr. Sullivan: That is all.

The Court: That is all.

Mr. Sullivan: Now, Mr. McAllister appears as attorney of record.

The Court: Who framed this petition, and filed it?

Mr. Sullivan: Mr. McAllister.

The Court: Let me ask Mr. McAllister several questions.

[fol. 34] FRANK E. MCALLISTER, called as a witness in behalf of the Petitioners, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Sullivan:

The Court:

Q. Tell the Court all you know about the institution of this proceeding, Mr. McAllister, how they came to be instituted, why they were instituted. You were connected as counsel for the petitioning creditors?

A. I was counsel for the petitioning creditors. I am connected with the law firm of Schaeffer & Sullivan, No. 1 North La Salle Street. These gentlemen came into the office, and wished to institute a proceeding under 77B.

The Court:

Q. You mentioned "these gentlemen," what do you mean by these gentlemen?

A. Mr. Harris——

The Court:

Q. These petitioning creditors?

A. Mr. Rose and Mr. Gordon, the three petitioning creditors in this case. They had a report on the proceedings from an appraiser, which I went over. I found that the property was located not only in Chicago, but in other states, in Kansas City, some in Michigan and Indiana, and it occurred to me that probably we could get quicker action on it by starting it in Danville, where it would be more central to all property of the debtor, rather than have it congested up here in Chicago. And for that purpose I drafted the petition and filed it in Danville about a month ago, I believe.

The Court:

Q. Have you a copy of that appraisement that you spoke of?

A. I have, your Honor, but it is up in the office, and it is a very voluminous report gotten up by a real estate expert, and it is quite a little bit—not in reference to the entire

history, but the ramifications of this company, and the promoters.

The Court:

Q. Do you remember what the appraisement of this particular property was?

A. Well, no, I am not sure, your Honor, I just remember they had a great deal of property scattered about in several states.

The Court:

Q. This bond issue that is secured by this trust deed now being foreclosed in the state court, that covers solely this Chicago property?

A. That covers solely this Chicago property.

[fol. 35] The Court:

Q. Do you remember the amount of the issue?

A. No, I don't recall it offhand, your Honor, but I recall also that this company had done a great deal of transferring back and forth with reference to these various properties, which consist of some flat buildings in Kansas City and various farms in Indiana and Michigan which are named by the various names of the owners. They traded back and forth a great deal, from the report, as I gathered it, and the thing is somewhat obscure and hazy in spots. It indicates there was a great deal of trading going back in this corporation, and it all relates back to the Granada Hotel Corporation.

Mr. Schaeffer: $525,000.00 is the issue. I will offer one of those bonds.

The Court: I suppose it will come out.

Mr. Schaeffer: I will offer it if the counsel wants me to.

Mr. Jones: I don't want you to do anything.

The Court:

Q. Do you recall any of the details of the property?

A. The Hotel here was the Arlington Hotel, as I recall it, quite a large hotel in Chicago.

The Court:

Q. That is over on the north side?
A. Yes, your Honor.

The Court:

Q. Is it part of the Arlington Club?
A. I don't think so. There is a great deal of transfer of property here.

The Court:

Q. Can you send for this appraisement and have it brought over?
A. Yes, sir.

Mr. Schaeffer: Surely.
The Court: I would like to see it, if you will send for it.

Q. After you talked with those clients and found out, did you check up on this state court procedure, or was that covered in this document?
A. Yes, I checked up on the state court procedure, and it was my opinion at the time it was still pending.

The Court:

Q. What did you find over there? Haven't you got a memorandum of it?
A. No, I just saw there was a proceeding pending there, and the receiver had been appointed, and the thing still seemed to be alive, and so I alleged it in the petition, and brought the action.

The Court:

Q. Was there any interest paid on any of these bonds?
[fol. 36] A. We have here in the file a copy of the bill here, William A. Thuma, complainant, vs. the Granada Hotel Corporation, Case No. 519151, an order of Judge Gentzel, dated in January 1934, entered January 12th, 1934 by Judge Robert E. Gentzel, which ordered that the Chicago Title & Trust Company, heretofore appointed receiver, is authorized to disregard the provisions contained in the order appointing it such receiver, whereby it was excused from actually operating the premises in said order described; and

it is further ordered that said receiver now be, and it is hereby authorized and directed to take possession of said premises, manage and operate the same, and collect the rents, income and profits until the further order of the court.

The Court:

Q. Do you know, or do you recall at this time, Mr. McAllister, whether or not any interest was ever paid on this bond issue?

A. I couldn't find that it has been, within the last two or three years anyway. A complete default, as I check it. I have also another order entered April 24, 1934 in the same proceeding, whereby the account of the receiver was confirmed, and ordered filed, and whereby the receiver had the sum of $3,000.00 cash in its possession—no, is allowed $3,000.00 for receiver's fees. James J. Gaughan, solicitor, was allowed $300.00 in payment for legal services, and the Central Republic Trust Company, as trustee, was directed to be paid by the receiver out of the cash in its possession $2500.00, under a trust deed; also the receiver was ordered to pay insurance. $2500.00 to the Central Republic Trust Company, reducing the amount due on receiver's certificates. The receiver was also ordered and directed to sell the securities in its account, and to pay the proceeds to the Indemnity Insurance Company of North America, whereupon, it says, it would be released and discharged as receiver from any liability on account of the receiver's certificates in the case.

The Court: Well, those orders speak for themselves, of course.

Mr. Schaeffer:

Q. You have an order of appointment of the Chicago Title & Trust Company?

A. I have another order January 12, 1934, of Judge Gentzel in the same proceeding where the Chicago Title & Trust Company was appointed the receiver.

The Court:

Q. Who represents this debtor? Has it any attorneys in Chicago, do you know?

[fol. 37] A. Whether they are here?

The Court:

Q. Whether they have any local representative in Chicago?

Mr. Schaeffer: Yes, your Honor, on the notice, admitted by the vice-president of the company, Mr. Nichols, Fred Nichols. We served him, and he signed.

The Court: They have made no appearance?

Mr. Jones: For your Honor's information, the corporation was dissolved in 1930.

The Court: Did they pay a franchise tax?

Mr. Jones: No.

Mr. Schaeffer: He is still signing as vice-president.

The Court: Well, they are still in existence for the purpose of paying the debts. What I would like to get and have made a part of your record is the document which you had in your possession at the time, in the way of an appraisement.

Mr. Schaeffer: We are perfectly willing to supply it, but we don't want to make it part of the record, because these documents that we have clearly demonstrate fraud in the use of these moneys obtained from the sale of these bonds, not only in the building of this building, but to the enhancement of the directors and promoters and these officers in the building of other buildings; and these records disclose that. And we don't want to disclose all that until we have the opportunity to act. The officers of the Cody Trust Company, to give an illustration, we will show that they held out money taken from these bonds for the purpose of paying taxes. We will show that that was not paid, and this Cody Trust Company subsequently allowed them to be sold, the property to be sold, and bought the certificates of sale. And we will show also that the money was diverted from this corporation into at least two or three other hotels, part of the money used in the operation, in the construction and operation of other hotels, and that a fraud was perpetrated upon the bondholders of this corporation.

The Court: I don't want to interfere with any of your plans.

Mr. Schaeffer: We are willing to present it to the Court for the Court's information.

The Court: Is there anything in your appraisement what you don't want to make public to advise these parties what you are planning?

The Witness: Much of the information I have is of a very confidential nature. It came to us from sources which I [fol. 38] would not want to disclose. We would trace the ramifications of what I allege here is a conspiracy to defraud.

The Court: You contemplate such a thing in the future?

Mr. Sullivan: It is in the petition, your Honor.

The Court: All right, any cross-examination?

Cross-examination.

By Mr. Jones:

Q. In your examination of the records of the foreclosure case in the state court did you find that there was an order entered in that foreclosure case on April 24th, 1934, discharging the receiver, Chicago Title & Trust Company, that you said you had found had been theretofore appointed receiver?

A. I found an order pursuant to a stipulation, that is, an agreed order, which I figured was rather in fraud of my clients' rights there.

Q. I didn't ask you that. What I asked you was not your opinion, but did you find that there was order entered on that day discharging the receiver and approving his final report and account?

A. I found the order, which I read to your Honor.

The Court: The order, the end of the order, excusing the Chicago Title & Trust Company from exercising its duties as receiver, and later discharging it and putting it in possession as trustee.

Mr. Jones: That was part of it, but it speaks for itself.

The Court: You have a copy of it?

Mr. Jones: Yes, your Honor.

The Witness: I also found an order entered March 16th, where the Central Republic Trust Company came in before Judge Harry Lewis, as trustee under this document 1061996 for the surrender to and as such trustee by the receiver possession of all this real estate.

The Court:

Q. What did the Central Republic Trust Company have to do?

A. They were the trustee.

The Court:

Q. Under the trust deed originally?

Mr. Schaeffer: Oh, no, originally was Cody Trust Company.

A. Originally was the Cody Trust Company, but the cross complainant was the Central Republic Trust Company, your Honor. Upon stipulation of the parties hereto this order of March 16, 1934, which stipulation is filed in open court: It is ordered that the Chicago Title & Trust [fol. 39] Company, receiver, forthwith surrender to the Central Republic Trust Company its property in Chicago, Lots 32 and 33——

The Court:

Q. Is the Central the trustee in the state court?

Mr. Jones: Yes, your Honor, the trustee of the first mortgage issue.

Mr. Schaeffer: The Central was not trustee in the first issue, but the Chicago Trust Company.

Mr. Jones: The Chicago Trust Company eventually turned into the Central.

Mr. Schaeffer: And the Central is now in liquidation itself.

Mr. Jones: The City National Bank & Trust Company has been substituted trustee in the first mortgage foreclosure.

The Court:

Q. When?

Mr. Jones: January 3rd, 1935.

Mr. Schaeffer: Subsequent to the filing of the petition.

The Witness: I might mention that counsel who are here represented the Central Republic Trust Company.

Mr. Jones: Sure, we represented the complainant in that case in the state court.

The Court: Any further examination?

Mr. Jones: No.

The Court: Are you gentlemen intending in this matter to proceed and offer a plan of reorganization?

Mr. Schaeffer: We are, your Honor, we are working on a plan. The reason we are not in a position to offer it today—although we have a tentative plan—is that we intend to immediately move for a hearing to determine what our interests are in these other properties that we contend part of our money went to construct. And until we know that we would not be in a position to determine what our assets were.

The Court: All right, now do you want to offer some evidence on the question of jurisdiction?

Mr. Jones: Yes, the certified copy of the order discharging the receiver.

The Court: It may be received in evidence.

Mr. Schaeffer: No objection.

(The said document so offered and received was marked 1, and is in words and figures as follows, to-wit:)

[fol. 40] EXHIBIT 1

Placita—Superior Court of Cook County (Order)

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Pleas, before the Honorable Harry A. Lewis, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday being the Second day of April, in the year of our Lord, one thousand nine hundred and thirty-four, and of the Independence of the United States of America, the one hundred and fifty-eighth.

Present: The Honorable Harry A. Lewis, Judge of the Superior Court of Cook County.

Thomas J. Courtney, State's Attorney.

William D. Meyering, Sheriff of Cook County.

Attest: Frank V. Zintak, Clerk.

Be it remembered, that heretofore, to wit: on the 24th day of April in the year of our Lord one thousand nine hundred and thirty-four the same being one of the days of the April Term of the Superior Court of Cook County, the following among other proceedings were had in said Court and entered of record, to-wit:

[fol. 41] STATE OF ILLINOIS,
County of Cook, ss:

IN THE SUPERIOR COURT OF COOK COUNTY

No. 519151

WILLIAM A. THUMM

vs.

GRANADA HOTEL CORPORATION, et al.

Order

This cause coming on this day to be heard upon the final account and final report of Chicago Title & Trust Company, Receiver herein, and upon due notice to all parties of record and the Court having examined said account and having read and considered said report and being now fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed

1. That the said account, together with the said report be and each of them hereby is in all respects approved and confirmed and ordered filed.

2. That the said receiver be and it hereby is allowed out of the cash now in its possession as shown in its said final account the sum of Three Thousand Dollars ($3,000.00) in payment of its services as Receiver herein from the date of its appointment to and including the date hereof, and the said Receiver is directed to make payment of said sum out of the cash in its possession as shown in its said account.

3. That said Receiver be and it hereby is ordered and directed to pay to James J. Gaughan, its solicitor, out of the cash in its possession as shown in its said account the sum of Three Hundred Dollars ($300.00) in payment

for the legal services rendered for and on behalf of said Receiver from the date of its appointment to and including the date hereof.

4. That the said Receiver be and it hereby is ordered and directed to pay to Central Republic Trust Company, as Trustee, under the trust deed recorded in the office of the Recorder of Cook County, Illinois as Document numbered 10161996, out of the cash now in its possession as shown in its said account the sum of Twenty-Five Hundred Dollars ($2500.00).

5. That the said Receiver be and it hereby is ordered and directed to pay to Indemnity Insurance Company of [fol. 42] North America, the holder of the Receiver's Certificate of Indebtedness issued pursuant to order of this Court entered on August 11, 1933, the balance of cash that shall remain in its possession after the payment of its own fees, the fees of its solicitor and the sum of $2500 to the said Central Republic Trust Company, as Trustee, under the Trust Deed aforesaid, in reduction of the amount due upon the said Receiver's Certificate of Indebtedness, and in connection therewith it is ordered that the said cash payment be credited and endorsed upon said Certificate.

6. That the said Receiver be and it hereby is ordered and directed forthwith to sell at the market value thereof each and every of the securities set forth in its said account under the heading of "Investments on Hand" and to pay the proceeds of such sale or sales to Indemnity Insurance Company of North America, the holder of the said Receiver's Certificate of Indebtedness issued pursuant to the said order of this Court, and that the said proceeds resulting from the sale of said securities be credited on the amount due on said Certificate of Indebtedness.

7. That the said Receiver be and it hereby is released and discharged as such Receiver of and from any and all liability on account of the said Receiver's Certificate of Indebtedness aforesaid, issued as aforesaid under order of this Court entered on August 11, 1933.

8. That all of the acts and doings of said Receiver and as well all of its receipts and disbursements from the date of its appointment to and including the date hereof be and

each of them hereby is in all respects ratified, approved and confirmed.

9. That said Receiver be and it hereby is released and discharged from any and all further duties in this cause.

Enter.

Harry A. Lewis, Judge.

April 24, A. D. 1934.

STATE OF ILLINOIS,
County of Cook, ss:

I, Frank V. Zintak, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete [fol. 43] copy of a certain Order made and entered of record in said court in a certain cause now pending in said Court on the Chancery side thereof, wherein William A. Thuma is Plaintiff and Granada Hotel Corp. et al. are defendants.

In witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, this 21st day of January, A. D. 1935.

Frank V. Zintak, Clerk. (Seal.)

COLLOQUY

Mr. Jones: Your Honor, what I am about to say may not technically come up at this time upon this question, but it will on the next.

The Court: Well, let me ask, is there any question now as to the facts of the state procedure, and the status?

Mr. Jones: Yes.

The Court: I mean, is there any question as to the facts, is there any dispute as to the facts in regard to that? When was your bill filed?

Mr. Jones: It was filed, first, as a partial foreclosure in 1931. Subsequently, it turned into a complete foreclosure.

The Court: You mean, when you originally filed it there were only coupons in default?

Mr. Jones: That is right, started as a partial foreclosure.

The Court: And then, later, as the principal became due——

Mr. Jones: There was a second mortgage foreclosure.

Mr. O'Brien: A partial foreclosure of the second mortgage and a cross-bill to foreclose the first.

The Court: Who filed the original bill?

Mr. Jones: William A. Thuma.

The Court: Was he the complainant?

Mr. Jones: Yes.

The Court: Is he a trustee, or individual owner?

Mr. O'Brien: Individual owner.

The Court: How much was involved?

Mr. O'Brien: A small amount, $3,000 or $4,000.

The Court: Before the Central came in as trustee under the other mortgage, and it filed its cross-bill on the first mortgage, and that was 1931. Then the Chicago Title & Trust Company was appointed receiver.

Mr. O'Brien: Right.

The Court: And that receivership continued until early in 1934?

[fol. 44] Mr. O'Brien: That is right.

The Court: And early in 1934 the receiver was discharged, and the trustee was put into posesssion by the state court.

Mr. O'Brien: That is right.

Mr. Schaeffer: By stipulation.

Mr. Jones: And is still in possession.

The Court: These facts are not disputed?

Mr. McAllister: Not that I know of.

Mr. Jones: The receiver stepped aside, and the trustee went in.

The Court: The foreclosure is in what condition?

Mr. O'Brien: It is before the Master for proof, and, due to some recent decisions, the plan is for the trustee in that foreclosure to bid in on behalf of all bondholders, the first mortgage bondholders.

The Court: Has there been evidence taken before the Master?

Mr. O'Brien: None as yet, because the pleadings are just settled.

The Court: Who is the Master?

Mr. O'Brien: Robert C. O'Connell. There was a second mortgage of $360,000.00.

The Court: That was not foreclosed?

Mr. O'Brien: They have been barred in this action.

The Court: It was not foreclosed?

Mr. O'Brien: No.

The Court: How much is that first mortgage?

Mr. O'Brien: $525,000.00 original issue; I understand $25,000.00 was subordinated.

The Court: Where is this hotel?

Mr. O'Brien: 525 Arlington Place, on the north side, just a little bit west of Clark Street.

The Court: Near the Surf Hotel?

Mr. O'Brien: Not very far from it.

The Court: And the North Chicago Hospital?

Mr. Schaeffer: Just across the street from the North Chicago Hospital, and three blocks from the Surf Hotel.

The Court: That is west of Lincoln Park. What was the size of the hotel, what size hotel is it?

Mr. McAllister: Nine stories.

Mr. O'Brien: Probably eight or nine stories.

The Court: Do you know how many rooms?

Mr. McAllister: A total of 215 rooms.

[fol. 45] The Court: Is that about right?

Mr. O'Brien: I would say it is twice that.

Mr. Schaeffer: It depends on what they call it. One or two-room flats. It occupies about 150 by 150 105 feet.

The Court: Do you recall the appraised value of this property at the time you filed your petition?

Mr. McAllister: No, I don't recall, but it was not the amount of the bond issue.

The Court: Do any of you gentlemen?

Mr. Jones: We haven't seen any appraisement.

Mr. Schaeffer: $375,000.00.

Mr. McAllister: It is not the amount of the bond issue; considerably less.

Mr. Jones: Some people think none of the present day values equal the bond issues.

The Court: None of them?

Mr. Jones: Generally speaking.

The Court: There ought to be some exceptions.

Mr. Jones: Sure.

Mr. McAllister: My idea is that this thing had been pending so many years in the state courts.

Mr. Jones: Well, we must all remember that during that period there were many things that interfered: the banks closed up, the Security Act situation—you couldn't finance

a thing—a number of problems then that are now out of the way.

What I was about to say to your Honor, while technically, it does not come up possibly on this question of whether or not this petition was filed in good faith, yet it would come up when the next branch of this motion came along, where you are asking to enjoin the foreclosure in the state court, and the appointment of a trustee to take possession of that property. Therefore, I think, in duty bound, I should mention it right at this time, your Honor, as you are considering the question of filing it in good faith, and that is this:

I am asking leave on behalf of the City National Bank & Trust Company of Chicago, as successor trustee under the first mortgage issue, to file a special and limited appearance here to direct the attention of the Court to the fact that summary proceedings may not be had here—the debtor corporation involved here has not owned or has not had title to the mortgaged hotel company——

[fol. 46] The Court: Yes, I have had that question here time and again.

Mr. Jones: Since the year 1930.

The Court: Let us see whether there is any dispute about that. There was a decree of the state court forfeiting the charter for non-payment of taxes?

Mr. Jones: Not at all, that is not the question.

The Court: What was it?

Mr. Jones: By deed. In 1930 the debtor conveyed to another corporation, and that corporation is not before this court. And I have prepared an intervening petition under this special and limited appearance which sets forth the facts in that regard, and states them more accurately than I could possibly.

The Court: We haven't reached that stage just yet. There is nothing else upon this question of good faith?

Mr. Jones: I have nothing to offer.

The Court: Apparently they filed it in good faith, and I shall so find.

The objection to the jurisdiction of the court, to which I have listened, for the reasons I have previously stated, I don't believe is a good objection. I think the purpose and intent of Congress was to take jurisdiction in all cases where foreclosure proceedings were pending and where

bond issues were in defualt, where petitioners desired, in good faith, that the federal court should take jurisdiction. Of course the Act says, equity receivership. Receivership is a fiduciary relationship, the receiver holds the property for the benefit of the parties to whom the court may eventually deliver the property, or to whom the proceeds of liquidation will come, in accordance with their respective interests, if liquidation shall be decreed.

Now it appears here that this trustee's duty with regard to the disposition of that property is in no wise different from the duty of the receiver. It may not distribute the proceeds of the property, or the property itself to any person or persons than those designated by the court as beneficiaries. So the difference between the trusteeship and the receivership in possession is nil, and the mere name of "receiver" or of "trustee" is in the opinion of this court a wholly immaterial one, one without real difference. Consequently, I think the Act is directly applicable to these situations, and the petition will be approved.

[fol. 47] Now, what is your next step?

Mr. Schaeffer: Your Honor, for the appointment of a temporary trustee.

Mr. Jones: Upon that point, if there is nothing to appoint a trustee for——

The Court: I might appoint a temporary trustee to investigate the condition and report to the court.

Mr. Schaeffer: All right.

The Court: Whom have you in mind, gentlemen?

Mr. McAllister: We might suggest the court appoint whoever the court has in mind. I know Mr. Goldstein, who is in charge of the real estate department of the Board of Education, who has been for a number of years, a man of unimpeachable integrity.

The Court: Is it mandatory upon me to appoint somebody from the District in which this was filed, or is it not?

Mr. McAllister: I think—my own impression is that you are, because that is one of the things that was before Congress when the Irving Trust Company was making a very——

The Court: I have appointed Mr. Meyers as a trustee for the Algonquin. I don't know whether he will ever have a job in this case or not, but it seems to me it might be advisable to appoint him as temporary trustee, not to take

possession, but to investigate and report formally to the court as to what he finds the condition to be with regard to the present operation of the property: the title, occupancy, tenants, the rentals, and what is going on. And the court may find that the trustee should remain in possession pending the final disposition of this case. And I bespeak therefor from the trustee co-operation so that he may have the full understanding and help here when he reports, so that I can determine whether, pending this litigation I shall permit this trustee to remain there or not.

Mr. Jones: We will see that he gets the facts as to title and its operation.

The Court: Will some of you gentlemen take it up with Mr. Meyers and have him take it up?

Mr. McAllister: It is very satisfactory, he is satisfactory so far as the petitioning creditors are concerned.

The Court: You may draft an order in accordance with that suggestion.

Mr. McAllister: I have an order, I have left the name of the trustee blank.

[fol. 48] Mr. Schaeffer: If he wants to appoint him temporarily, that order would not be applicable.

Judge, we will draw an order and submit it to Mr. Jones.

Mr. Jones: Very well.

The Court: What is ~~you~~ next motion?

Mr. McAllister: A date upon which the appointment of the trustee may be made permanent.

The Court: That must be within thirty days.

Mr. McAllister: Within thirty days, that is right.

The Court: This is the 22nd—February 19th.

Mr. McAllister: And notice to creditors.

The Court: They must be notified then.

Mr. McAllister: Two days for mailing.

Mr. Schaeffer: The order should provide that the present trustee should file the list of creditors, bondholders, so as to make it possible for us to give such notice to them as is necessary.

The Court: I guess, under the decisions, you had better do that.

Mr. Jones: The Statute is that the trustee that your Honor appoints shall file a report. The other matter comes up upon exceptions, if, as and when the trustee reports he could not get them. But there is no foundation here at this time.

The Court: Will you give the list to Mr. Meyers?

Mr. Jones: May I defer my answer to that——

The Court: Because if you don't I will issue a subpœna now.

Mr. Jones: May I defer the answer for a moment? I will answer you before we leave here.

There was another motion called, your Honor? The motion read, to enjoin future prosecution of the foreclosure case in the state court, and, speaking *to* that, I want to take leave from the Court under a special and limited appearance, which I have handed up to your Honor, to file the petition of the City National Bank & Trust Company, the successor trustee under the trust deed which is involved in the foreclosure case in the state court.

And in that petition the showing is made, under oath, that the debtor corporation for whom your Honor has appointed a temporary trustee, is not the owner of and has no title or interest in either the real estate or the personal property that is situated in that hotel. And the petition goes on to show, passing the formal parts on the first page, para-
[fol. 49] graph 4, that by warranty deed dated April 29th, 1929, Granda Hotel Corporation conveyed the above described real estate to Granda Apartments, Inc., an Illinois corporation, which latter corporation has owned the premises ever since. Your petitioner as such trustee is likewise in possession of the personal property and equipment (reading from said petition).

The Granda Hotel Corporation never had anything to do with the furnishings in that hotel.

Under those circumstances it seems clear to me that the motion to enjoin the prosecution of the foreclosure case in which the debtor corporation has no interest should be denied. There is, surely, here, if your Honor please, at least a controversy which can be determined only by a plenary action by a trustee under the decisions of the Supreme Court of the United States, not by a summary proceeding without consent.

The Court: Is there any disputed issue in the state court as to the title?

Mr. Jones: No, your Honor.

The Court: Is there anybody making a claim?

Mr. Jones: No, because the trustee has the chattel mortgage. Albert Pick & Co. finally took out all of their equip-

ment, and then, later on, the receiver and the trustee, if the facts as related to me, if my memory is correct, I was not in that part of the case, refurnished the hotel out of earnings.

Mr. Schaeffer: Who owns them then?

Mr. Jones: The trustee under the first mortgage bond issue. But the Granda Hotel Corporation deeded everything it had in 1929, parted with everything, the deed is on record. There was a refinancing problem on there. Now no trustee appointed of any bankruptcy estate has a right to take possession, under the decisions, of property adversely held, in a summary proceeding. That being so—

The Court: Did you read the last decision the Supreme Court handed down last week?

Mr. Jones: On a consent proceeding?

The Court: No, on what is a colorable proceeding.

Mr. Jones: Did they change from the prior rulings?

The Court: No, but the language of this opinion I want to call to your attention.

(At this point the Court left the Bench and brought a book or pamphlet from his chambers, from which he read to counsel.)

[fol. 50] Mr. Jones: They held right in line with the prior holdings of the Supreme Court. I think we have a different situation here.

The Court: You have a different situation here to this extent: there is, as in many of these building corporations in this city, apparently a conveyance from one corporation to another. I find that in many instances. The building corporations must have some reason for such action. Consequently, there is no present title in the debtor, in this corporation.

Mr. Jones: Agreed.

The Court: And I have to say again, what did Congress mean when it passed this Reorganization Statute, and gave to the Court of Bankruptcy jurisdiction of a reorganization proceeding, a property which is encumbered. I have thought a good deal about it, because that question has been up before, and some counsel in this case have some other proceedings where they are making a claim of third parties. I recall particularly the 1030 North Dearborn Bldg. com-

pany. There, there was a conveyance of the hotel. But here we have a statute, which, I think is intended to confer jurisdiction over the res of the property, and to permit creditors to effect a reorganization.

It seems to me what the court is dealing with is the property and the claims against it. The bondholders, who have their interest in this property, desire to work out a reorganization under the supervision of the court, where a majority of the bondholders can force a reorganization, as compared with the state court proceedings, where a majority can not control, and where if there are non-assenting bondholders they must be taken care of by court order fixing a just compensation for their interest in the property.

Now, consequently—I may be all wrong again—but I am trying to interpret this Act as I think it was intended to be interpreted by Congress, and I think what this court should devote its attention to, over which he takes jurisdiction, is the res against which bondholders have liens.

Mr. Jones: Suppose there is a bond issue by A in 1925, and in 1926 A sells that property upon which that bond issue is placed, to B. And then suppose, in 1935 A——

The Court: You mean for a valuable consideration?

Mr. Jones: Yes, your Honor.

Then A is put into reorganization under 77B. To my mind, most respectfully, I submit to your Honor that the Bankruptcy Court having jurisdiction of A there, would [fol. 51] have no right, in a summary proceeding as distinguished from a plenary action (citing Harrison v. Chamberlin, 272 U. S.) would have no right to take that action.

That situation is this——

The Court: The trouble with that is this: You lose sight entirely of the logic of this situation, and that is, that this is a petition in rem by bondholders for the reorganization of a piece of property in which they have an interest, without regard to where the title is. Because Congress has done something it never had done before. It is attempting to do something that is far beyond what we concede ordinary court proceedings are.

Mr. Jones: True.

The Court: Just as the original Bankruptcy Act came along and was so far flung from what had been done before. We had always believed that a judgment could not be set

aside, but the first thing that Congress did under the first Bankruptcy Act, where a judgment was obtained in a court with jurisdiction of the parties and subject matter and the party was insolvent, was to say the judgment was absolutely void. Now Congress has said, if there is a piece of property encumbered by a trust deed, and the bondholders own that property, those bondholders have the right to appeal to the United States Court—in an action, which is, so far as its essence is concerned, an action in rem and have that Court take jurisdiction and bring about a reorganization.

Mr. Jones: Of the property that belongs to the debtor. Ah, but if it don't belong to the debtor, then what?

The Court: That just is where you and I don't agree.

Mr. Jones: That is right, your Honor.

The Court: Because, as I say, I don't care who this debtor is, I don't care where he may live, I don't care what his interest may be. He has sold to the public units in that property; he may have conveyed it two or three times; it may have been conveyed two or three times, but the fact remains that those things, sold to the public, are in default, and that they own the property subject only to the equity of redemption.

And that is the thing that the court seizes hold of it this jurisdiction upon petition of bondholders. It takes the bondholders' property, and reorganizes the bondholders' property.

Mr. McAllister: And the Court can look behind the legal [fol. 52] fictions, and I think we will see quite a few legal fictions in this case.

Mr. Jones: That is a separate subject.

The Court: Now, if and when this subsequent grantee appears before this court and discloses such an interest as needs the protection of this court, this court will have a right to, and it would take cognizance of that and enter such orders as are in accordance with the facts and equity.

Mr. McAllister: That is correct.

The Court: But even that does not deprive these holders of the right to invoke under this mandate the jurisdiction of the federal court under the Constitution to take jurisdiction of encumbered property, reorganize it, and distribute it or dispose of it as the equity may demand. If we hold otherwise, we are defeating the purpose of the legislation.

Mr. Jones: I think not, for this reason, if the Court please—

The Court: Yes, if every time some fly-by-night grantee can come in and say it owns a property covered by a prior bond issue. Your client has no interest in this case except as a trustee.

Mr. Jones: I quite agree with that, of course.

The Court: Then why should it be so insistent upon an interpretation that would deprive the court of a jurisdiction which Congress intended should be worked out.

Mr. Jones: They have only the interest of the bondholders in mind. There are many other reasons that enter into this.

The Court: I am always told that.

Mr. Jones: But beyond that. If the debtor is the owner of the property, I agree this Court in a proceeding for the relief of the debtor can go ahead and reorganize.

The Court: This is more than a debtor's proceeding; this is a creditors' proceeding also. The statute expressly provides that the court may take jurisdiction of the property upon petition of the creditors who are interested in the property.

Mr. Jones: If, on the other hand, a showing is made to the court, that the debtor does not have title to the property that is sought to be reorganized, and it is made apparent to the court that that is not merely a colorable situation, but there is a substantial situation there, the Court, in my opinion, can only do what it could always do in the conventional bankruptcy, that is, to direct the trustee to take the proper steps—

[fol. 53] The Court: If they were a bona fide purchaser; that contention made by you is correct. But a trustee for bondholders has no standing in court to defeat jurisdiction.

Mr. Jones: He has a right to foreclose in the state court where he can protect the bondholders' title where in its opinion and in the opinion of its counsel you can not give good title through this proceeding.

The Court: Exactly.

Mr. Jones: Your Honor asked me a question, why we are insistent. Because in the opinion of the trustee and its counsel the only way these bondholders can get title to what is theirs, and theirs alone, is by the foreclosure in the state court, and that no matter what orders this court en-

ters here, it can not do that. We believe that otherwise——

The Court: Well, you may have your record on this matter.

Mr. Jones: Very well, that is what I wanted to make clear.

The Court: I will issue a temporary order against the prosecution of the foreclosure suit, without prejudice to the parties to have further hearings upon the matter if it is deemed essential. The time for the report of the trustee is made. These are all interlocutory orders.

Mr. Jones: May I have leave, your Honor, to file the special and limited appearance and petition of the City National Bank and Trust Company of Chicago as trustee?

The Court: You may file that special and limited appearance. In my opinion it is not sufficient to put you in a place in this court where you can raise this question. If you come into court and object to and answer the petition, your appearance, even though you call it limited, becomes one upon the merits.

Mr. Jones: And my objection to the entry of the temporary restraining order is noted? May I present——

The Court: The order will be that there is a temporary restraining order, subject to the further order of the court, without prejudice, hereafter to the parties in interest to move to dissolve it, or to raise the question in such manner as is proper practice.

Mr. Jones: I wish to appeal from that order.

The Court: You will have to file your petition and assignment of errors.

Mr. Jones: I was going to inquire in that connection how long your Honor would be in the City because I am——

The Court: Until tomorrow noon.

[fol. 54] Mr. Jones: Very well. Will your Honor indicate the amount of bond?

The Court: It should not be very much, say bond in the amount of $250.00.

Which was all the evidence offered or proceedings had on the hearing of the above entitled cause.

Certificate of Judge

And forasmuch as the matters and things above set forth do not otherwise fully appear of record in this cause the

respondent tenders this Transcript of Proceedings, and prays that the same may be certified under the hand and seal of the Judge of this Court, and thereby made a part of the record in such cause, which is accordingly done this 28th day of February, A. D. 1935.

Walter C. Lindley, Judge of the District Court of the United States, Eastern District of Illinois. (Seal.)

I approve the above Transcript of Proceedings.

Frank E. McAllister and Morris Schaeffer, Attorney for Petitioners.

IN UNITED STATES DISTRICT COURT

(Caption—2613D.)

MEMORANDUM—Filed Feb. 26, 1935

Parties holding bonds of the Granada Hotel Corporation, secured by trust deed, filed herein on December 31, 1934 their creditors' petition under Section 77-B of the Bankruptcy Act, seeking reorganization of the property, which consists of an apartment building, of some 200 apartments. The defendant corporation made no response to service of subpœna and has been defaulted. Evidence has been submitted upon the question of good faith, from which it appears that the petitioners are bona fide bondholders, who received their securities largely in consideration of services rendered in the construction of the building.

[fol. 55] The City National Bank and Trust Company, as trustee, on January 22, 1935 filed its special and limited appearance, urging that the Court has no jurisdiction, for the reason, as it alleges, that the Granada Hotel Company sometime ago conveyed its property to the Granada Apartment Company. The trustee filed also its intervening petition, asserting the same facts and, further, that in a foreclosure suit pending in the state court, a receiver, originally appointed to hold possession of the promises pending foreclosure, had been discharged and that an order had been entered in that court putting the trustee in possession. The trustee contends, therefore, that it is an adverse holder, and that the Court has no jurisdiction over it or the property

in its possession. A bondholders' committee appeared for the purpose of attacking the jurisdiction of the court, asserting that the state court proceedings does not constitute an equity receivership within the meaning of Section 77-B.

As the Court has previously pointed out, the intent of Congress apparently was to give the holders of bonds in default an opportunity to have property securing their bonds reorganized in the federal court in lieu of liquidation under foreclosure in either the state or federal court. Acting in pursuance of that right, the creditors, after patience with long extended foreclosure proceedings, not yet blossoming into decree, have filed their petition in proper form and submitted their evidence. The Court finds that the petition was filed in good faith and should be approved.

The Court is not impressed with the contention that the facts related do not constitute an equity receivership, essential to jurisdiction of this court. As is frequently observed, a receiver is a fiduciary of the Court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed. The trustee here, likewise, is a fiduciary of the state court and is acting under the orders, directions and control of that court. Words of themselves are unimportant; whether the trustee be called a receiver, a guardian, a custodian or by some other name, it remains, in its essence, a fiduciary in possession of property pending the outcome of foreclosure, holding under the Court's order, incidentally to the ultimate purpose of the state proceedings. Consequently there is an equity receivership within the meaning of that term as used by Congress.

Upon the question of whether the trustee is an adverse holder the Court at this time expresses no opinion. The effect of any conveyance from one corporation to another [fol. 56] of similar name is not now before the Court. Whether the facts are such that there is a holding of title adverse to the trustee is a question which must be determined from evidence submitted after full hearing. It is well recognized that this court has jurisdiction to examine the character of alleged adverse holdings and determine whether claims of adverse title is merely colorable or is asserted in good faith. But this Court is not now examining or determining that question.

The trustee contends that there should be no restraining order against the foreclosure proceedings in the state court.

Those proceedings have been pending for some four or five years and have not yet reached final decree. I am advised by counsel that the ultimate effect of a decree will be to bar certain parties claiming some interest. It seems desirable, therefore, that those proceedings be allowed to proceed to a decree. Such prosecution may result in the saving of time and expense in marshaling and liquidation of claims. However, it is desirable that no sale be had until it can be determined what is to be done under the present proceedings. I take it that counsel will not proceed to a sale without further communicating with the Court. Consequently, I shall at this time issue no restraining order against the prosecution of the foreclosure proceedings to an ultimate decree of foreclosure, but the Court will be open at all times, if necessary, for the purpose of entertaining application for injunction against a sale of the property.

Accordingly the Court finds that there is an equity receivership within the meaning of the statute; that the Court has jurisdiction of the petition; that same was filed in good faith and that a temporary trustee should be appointed, notice given to creditors and hearing had as to the appointment of a permanent trustee. Proper order may be submitted. The Court appoints Fred C. Myers as temporary trustee with directions, however, not to take possession of the property but to investigate and report fully. He should have counsel so that he can determine whether there is reasonable ground for him to invoke the jurisdiction of this court to determine in a summary proceedings whether claim of title is made in good faith or is merely colorable, or whether he should proceed with a plenary suit for such relief as the facts will warrant. Accordingly no bond is necessary at this time.

Entered this 26th day of February, A. D. 1935.

Walter C. Lindley, Judge.

[fol. 57] IN UNITED STATES DISTRICT COURT

(Caption—2613-D)

DECREE—Entered March 2, 1935

This cause coming on to be heard upon the motion of Frank E. McAllister, attorney for the petitioning creditors

in the above entitled cause and due notice having been given all parties in interest, and the Court having heard the arguments of counsel and being fully advised in the premises;

It is Hereby Ordered:

1. That the petition of the petitioning creditors, Sam Harris, J. Rose and I. Gordon, be and the same is hereby approved as being properly filed and filed in good faith.

2. That Fred C. Myers, be and he is hereby temporarily and until further order of this Court, appointed Trustee in this cause to investigate the properties of the debtor and to report formally to the Court as to what he finds the conditions to be with regard to the properties and the present operation thereof.

3. That the said debtor be and it hereby is ordered to give access to the said Fred C. Myers, temporary Trustee, to all of its books, records, papers, contracts, files and other documents for the purpose of further advising this Court.

4. That the City National Bank and Trust Company, Successor Trustee in the Trust Indenture, allow the said Fred C. Myers, temporary Trustee, to examine all documents, books, records, contracts, files and other papers in its possession and under its control relative to the affairs of the above named debtor, so that the Court may be properly advised in the premises.

5. That the Cody Trust Company and its Receiver, be and each of them are hereby ordered to and directed to give access to the said Fred C. Myers, temporary Trustee, to all books, records, documents, contracts, files and other [fol. 58] papers relating to the affairs of the debtor corporation herein, so that the Court may be properly advised in the premises.

6. That the City National Bank and Trust Company, Successor Trustee, and the Debtor Corporation, shall file with the Clerk of the United States District Court forthwith, a complete list of all creditors and stockholders of the debtor corporation, and upon the properties described in the creditors' petition herein.

7. That said Temporary Trustee shall have counsel to assist in the determination of matters of title in this cause

and that Walter Fackler & Walter T. Gunn is hereby appointed as attorney for the temporary Trustee in said matter.

8. That a hearing be, and the same is hereby set for the 30th day of March, 1935, at 10:00 o'clock A. M., at which hearing, or any adjournment thereof, the Court will determine whether or not it shall make permanent the temporary appointment of said Trustee, or shall terminate such appointment, and restore the Debtor to possession, or shall appoint a substitute Trustee or appoint an additional Trustee or Trustees, and the temporary Trustee is hereby directed to cause a notice of said hearing to be published once a week for two successive weeks in a newspaper of general circulation published in Chicago, Illinois, and that said Trustee send by mail a copy of said published notice to all creditors and stockholders of the debtor whose names and addresses are known to said Trustee at least ten (10) days before the date set for said hearing.

Enter.

Walter C. Lindley, Judge.

Dated March 2, 1935.

[fol. 59] IN UNITED STATES DISTRICT COURT

(Caption—2613-D and 59143)

ORDER TRANSFERRING CAUSE—Entered March 9, 1935

For the reasons indicated in the memorandum filed in 2438-D which is incorporated herein by way of reference,

It Is ordered by the Court that this cause be and the same is hereby transferred to the District Court of the United States for the Northern District of Illinois, and that the Clerk transmit to that Court all pleadings, transcripts, orders and other documents herein.

Dated this 9th day of March, A. D. 1935.

Walter C. Lindley, Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS

No. 2438-D

In Re FLAMINGO HOTEL

This proceeding has reached the stage where plans have been filed by various parties in interest and consideration of the same is pending. An order has been entered referring the determination of claims to Jacob Grossman, Esq., as master.

It is the belief and hope of the Court, encouraged by the suggestions of the parties, that a feasible plan of reorganization can be arrived at at an early date. The administration under the trustee has proceeded with pronounced economies over the former administration.

I have recently been notified that I have been assigned by the Chief Justice to hold court in California. The extent of my stay there is indefinite but it may be as long as three months.

The property involved in this cause is located in Chicago. Most of the interested parties and their counsel reside there. The only suggestion for transfer pending has been filed by the trustee in the state court foreclosure proceedings. All parties have expressed their willingness that the administration should proceed here in the belief that early [fol. 60] reorganization can be had. However, in my absence, the discharge of all judicial duties in this district will devolve upon Judge Fred L. Wham, whose official residence is at East St. Louis, and who must be in Cairo for the April term and in East St. Louis in May and June. Consequently it will be most inconvenient for parties to present to him for consideration the plans for reorganization and other administrative matters arising herein. Furthermore, in my absence, his duties will be so increased, that his time will be fully occupied, leaving little or no opportunity to give extended consideration to the problems of administration and reorganization presented herein.

Consequently the situation is one where the provisions of 77-B apply and I believe that, acting in my discretion, I should, in the interest of and for the convenience of all parties transfer this proceedings to the Northern District of Illinois.

Accordingly it is ordered by the Court that the cause be and the same is hereby transferred to the Northern District of Illinois; that the Clerk transmit to that court all pleadings, documents, transcripts of orders and other records herein.

Entered this — day of March, A. D. 1935.

—— ——, Judge.

(Endorsed:) 59143. Filed Mar. 14, 1935. At 10:00 O'clock A. M. Henry W. Freeman, Clerk. Filed Mar. 9, 1935. D. H. Reed, Clerk.

[fol. 61] In United States District Court

(Caption—59143)

Notice

To Defrees, Buckingham, Jones & Hoffman, 105 South La-Salle Street (Suite 1720). Frank E. McAllister, 111 West Washington Street (1246):

You Are Hereby Notified that on Thursday, March 21, A. D. 1935, we shall appear before his Honor, Judge Barnes, or in his absence, before whatsoever Judge may be hearing his motions, in his place instead, in the Federal Building, City of Chicago, Illinois, and shall then and there present the petition of John Mack, and shall ask that an order be entered in conformity therewith in accordance with the prayer of said petition, copies of which petition are herewith served upon you, at which time and place you may appear if you so see fit.

Mort D. & Frank Goldberg, Attorneys for John Mack.

Received a copy of the above foregoing notice on — March, A. D. 1935.

Defrees, Buckingham, Jones & Hoffman, Frank E. McAllister.

IN UNITED STATES DISTRICT COURT

(Caption—59143)

PETITION OF JOHN MACK—Filed March 21, 1935

Your petitioner, John Mack, respectfully represents unto the Court that he is the owner of the following described first mortgage bonds on the building sought to be reorganized by proceedings herein to wit:

[fol. 62]

Bond Nos.	Amount
C 236	$100.00
C 262	100.00
C 278	100.00
D 204	500.00

totalling the sum of Eight Hundred Dollars ($800.00).

Your petitioner further represents the foregoing bonds have not been deposited with any bondholders' committee.

Your petitioner further states upon the information and belief that the non-depositing bondholders are not duly represented in the proceedings brought herein and asks leave of Court that the firm of Mort D. & Frank Goldberg represent such class of bondholders.

Your petitioner further asks that an order be entered herein requiring all attorneys and parties to the proceedings to give notice of any and all further proceedings to the firm of Mort D. & Frank Goldberg.

And your petitioner will ever pray.

John Mack, Petitioner, by Mort D. & Frank Goldberg, by Frank Goldberg, His Duly Authorized Agents. Mort D. & Frank Goldberg, Attorneys for Petitioner, 1832—11 South Lasalle Street, Tel.: Central 9590.

Duly sworn to by Frank Goldberg. Jurat omitted in printing.

[fol. 63] IN UNITED STATES DISTRICT COURT

(Caption—59143)

ORDER GRANTING LEAVE TO ENTER APPEARANCES—Entered March 21, 1935

On motion of Mort D. & Frank Goldberg

It Is Ordered that leave be and the same is hereby given them to enter their appearance as solicitors for Non-deposited Bondholders and

It Is Further Ordered that notice of all motions and proceedings be served on Mort D. & Frank Goldberg.

IN UNITED STATES DISTRICT COURT

(Caption—59143)

APPEARANCE—Filed March 25, 1935

We hereby enter the appearance of John Mack, defendant, and ourselves as his attorney in the above-entitled cause.

Mort D. & Frank Goldberg, Defendant's Attorneys,
11 South LaSalle Street (1832), Central 9590.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

(Caption 2613 D and 59143)

PRÆCIPE TRANSCRIPT OF RECORD—Filed April 4, 1935

To the Clerk of the United States District Court for the Northern District of Illinois:

The Clerk will please prepare a transcript of the record in the above entitled cause for use on the appeal of C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer as members of a Committee constituted under the terms of the deposit agreement dated April 28,

1933 relating to first mortgage bonds of Granada Hotel Corporation, to the United States Circuit Court of Appeals for the Seventh Circuit (as allowed on petition and assignment of errors filed before the United States Circuit Court of Appeals for the Seventh Circuit) from an order entered in the above entitled cause March 2, A. D., 1935, and include in said transcript the following, that is:

1. Original petition herein filed by Sam Harris and others under Section 77B on December 21, 1934.
2. Subpœna issued in the Eastern District of Illinois to Granada Hotel Corporation, filed January 3, 1935.
3. Notice filed January 18, 1935 as given to George U. Nichols, Vice President of Granada Hotel Corporation.
4. Intervening petition of City National Bank and Trust Company of Chicago, as Trustee, filed January 22, 1935.
5. Answer of C. S. Tuttle, et al., to the original petition of Sam Harris, et al., filed January 22, 1935.
6. Petition of City National Bank and Trust Company of Chicago, as Trustee, for leave to intervene filed January 22, 1935.
7. Order of default entered January 22, 1935 against Granada Hotel Corporation.
8. Order entered January 22, 1935 granting leave to C. S. Tuttle, et al., to file instanter their answer to the original petition.
9. Order entered January 22, 1935 for leave to City [fol. 65] National Bank and Trust Company of Chicago to intervene and to file its intervening petition instanter.
10. Special and limited appearance of City National Bank and Trust Company of Chicago filed January 22, 1935.
11. Special and limited appearance of C. S. Tuttle, et al., filed January 22, 1935.
12. Memorandum opinion of Walter C. Lindley, Judge, filed February 26, 1935.
13. Order entered March 2, 1935 approving petition of Sam Harris, et al., as properly filed, etc.
14. Order entered March 9, 1935 transferring cause to Northern District of Illinois, etc.

Note: All and each of the above were filed in the Northern District of Illinois in Cause 54143, assigned by that District in the above matter as transferred from the Southern Dis-

trict of Illinois, and were so filed on the 14th day of March, 1935.

15. Notice filed herein March 21, 1935.
16. Petition of John Mack filed herein March 21, 1935.
17. Order entered herein March 21, 1935 granting leave to Mort D. and Frank Goldberg to file appearance, etc.
18. March 25, 1935, appearance of said John Mack and Mort D. and Frank Goldberg.
19. Bill of exceptions filed herein April —, 1935.
20. This præcipe for record.

Note: The appeal was prayed before and allowed by the Circuit Court of Appeals for the Seventh Circuit and the petition for appeal, bond and assignment of errors are on file in that court.

Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for C. S. Tuttle, et al.

Dated April —, 1935.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 66] In U. S. Circuit Court of Appeals for the Seventh Circuit

No. (as Transferred) 59143

(Eastern District Number prior to transfer, 2613-D)

In the Matter of Granada Hotel Corporation, Debtor

Notice of Appeal—Filed March 28, 1935

To Mort D. and Frank Goldberg, 1832—11 S. La Salle Street; Frank E. McAllister, 1246—111 W. Washington Street Chicago, Illinois:

Please Take Notice that on the 28th day of March, 1935, at the opening of court in the forenoon, we shall appear before the United States Circuit Court of Appeals for the Seventh Circuit, or before the presiding judge thereof, and

shall present and file the petition for appeal and the assignment of errors of C. S. Tuttle and others, members of a committee acting under deposit agreement dated April 28, 1933 relating to bonds of Granada Hotel Corporation, copies of which petition and assignment of errors are handed you herewith. We shall ask the entry of an order pursuant to the prayer of said petition.

Defrees, Buckingham, Jones and Hoffman, Attorneys for C. S. Tuttle, et al.

Received a copy of the above notice and of the petition [fol. 67] and assignment of errors therein referred to this 27 day of March, 1935.

Mort D. & Frank Goldberg, Frank E. McAllister.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR APPEAL—Filed March 28, 1935

To the Honorable, the Judges of Said Court:

Now come C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, by Defrees, Buckingham, Jones & Hoffman and Don Kenneth Jones, their attorneys, and respectfully petition the court that they be allowed an appeal from an order entered March 2, 1935 in the District Court of the United States for the Eastern District of Illinois by his Honor, Judge Walter C. Lindley in case then therein pending as No. 2613-D entitled "In the Matter of Granada Hotel Corporation, Debtor," since by order of the District Court for the Eastern District of Illinois transferred to the District Court of the United States for the Northern District of Illinois, Eastern Division, and now

numbered 59143, in and by which said order from which the [fol. 68] appeal is prayed the petition below was decreed to have been properly filed and the jurisdiction of the court upheld, and in and by which other relief was granted, a copy of which order is hereby attached marked Exhibit 1 and by reference made a part hereof.

And your petitioners show unto the court that:

1. The proceeding below was brought under Section 77-B of the Bankruptcy Act by some of the holders of first mortgage bonds of an issue of Five Hundred Twenty-five Thousand Dollars ($525,000) secured by real estate commonly known as Granada Hotel, and secured also by the personalty in the improvement upon said real estate, a copy of which petition is hereto attached marked Exhibit 2 and by reference made a part hereof.

2. That on January 18, 1935 the petitioners presented to the Honorable Walter C. Lindley, then sitting at Chicago, Illinois, their motion for the entry of orders pursuant to the prayer of the said petition, Exhibit 2 hereto, which said motion was entered and continued to January 22, 1935, and that on the 22nd day of January, 1935 your petitioners, by leave of court first had and obtained, filed their answer to the said petition, Exhibit 2 hereto, in and by which answer they showed to the court that there was no receiver for the debtor corporation or for any of its properties, and that the receiver mentioned in the creditor's petition below had been discharged long prior to the filing of the petition under 77-B; that therefore the court was without jurisdiction and that the petition below should not be approved as properly filed but should be dismissed, copy of which answer is hereto attached marked Exhibit 3 and made a part hereof.

3. That after full hearing the motions presented by the petitioners below were taken under advisement, briefs were submitted, and on February 26, 1935 the Honorable Walter C. Lindley filed a written opinion, pursuant to which the order, Exhibit 1 hereto, was entered. The said opinion is attached as Exhibit 4.

Wherefore, and for the reasons specified in their assignment of errors filed herewith, your petitioners pray that an appeal be allowed from the said order entered March 2, 1935; that a citation be granted directed to Sam Harris,

J. Rose, and I. Gordon, petitioning creditors below, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit to do and to receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings, pleadings, papers and evidence upon which said order was [fol. 69] entered, duly authenticated, be transmitted to said Circuit Court of Appeals by the Clerk of the said District.

C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, As members of a Committee constituted under the terms of the Deposit Agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, by Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Their Attorneys. Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Attorneys for said Petitioners

Duly sworn to by Vincent O'Brien. Jurat omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Mar. 28, 1935

Now come C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Com- [fol. 70] mittee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, and file the following assignment of errors on appeal from order of the District Court of the United States for the Eastern District of Illinois dated March 2, 1935 approving the original petition in the above entitled cause as properly filed and as filed in good faith, etc.:

1. That the said Court erred in entering the said order so appealed from in that the sole ground of jurisdiction averred was that a receiver had been named for the debtor or its property, whereas the proof showed that said receiver had been discharged long prior to the filing of the original

petition herein, and that there was no receiver for either the debtor corporation or any or all of its property.

2. That the Court erred in finding and decreeing that the possession of a Trustee under a trust deed in the nature of a mortgage is equivalent to an equity receivership.

Wherefore, they pray that the said order of March 2, 1935 be reversed.

C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, As members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, by Don Kenneth Jones, Defrees, Buckingham, Jones & Hoffman, Their Attorneys.

[File endorsement omitted.]

[fol. 71] In United States Circuit Court of Appeals

[Title omitted]

Order Granting Leave to Appeal—Entered March 28, 1935

Upon consideration of the petition of C. S. Tuttle, et al., etc., this day presented;

It is ordered that an appeal be allowed to C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm, and E. A. Kilmer, as members of a Committee constituted under the terms of the deposit agreement dated April 28, 1933 relating to first mortgage bonds of Granada Hotel Corporation, petitioners herein, from the order entered in the above matter March 2, 1935 by the District Court of the United States for the Eastern District of Illinois approving the petition in the above entitled cause as properly filed and as filed in good faith, and granting certain other relief, the appellants to file an appeal bond in the sum of $250.00.

It is further ordered that said appeal shall be returnable to the United States Circuit Court of Appeals for the Seventh Circuit within ten days and that a citation issue in the usual form directed to Sam Harris, J. Rose, and I. Gordon, petitioning creditors below, commanding them to appear before the United States Circuit Court of Appeals for

the Seventh Circuit, and that a transcript of the record, proceedings, pleadings, papers, and evidence upon which said order was entered, duly authenticated, be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed: No. 59143. United States of America, Circuit Court of Appeals in and for the Seventh Circuit. In the Matter of Granada Hotel Corporation, Debtor. Order. Filed March 28, 1935, Frederick G. Campbell, Clerk. Defrees, Buckingham, Jones & Hoffman, 105 South La Salle Street, Chicago.

[fol. 72] Citation, in usual form showing service on Sam Harris et al., filed April 4, 1935, omitted in printing.

[fols. 73 & 74] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 75] [Caption omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS

In the Matter of GRANADA HOTEL CORPORATION, Debtor

5488

C. S. TUTTLE, ALBERT J. PETERSON, LEWIS W. RIDDLE, W. G. Sturm and E. A. Kilmer, as Members of a Committee constituted under the terms of the Deposit Agreement dated April 28, 1933, etc., Appellants,

vs.

SAM HARRIS, J. ROSE and I. GORDON, Petitioning Creditors, Appellees

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

(Cause transferred from the Eastern District of Illinois)

MEMORANDA AS TO APPEAL PAPERS

And afterwards, to-wit: On the twenty-eighth day of March, 1935, there was filed in the office of the Clerk of this

court, a Notice of Appeal, which said Notice is not copied here as the same appears on page 66 of the Printed Record in this cause, certified herewith.

And on the same day, to-wit: On the twenty-eighth day of March, 1935, there was filed in the office of the Clerk of this court, a Petition for Leave to Appeal, which said Petition is not copied here as the same appears on pages 67 to 69 Inclusive of the Printed Record in this cause, certified herewith.

And on the same day, to-wit: On the twenty-eighth day of March, 1935, there was filed in the office of the Clerk of this court, an Assignment of Errors, which said Assignment of Errors is not copied here as the same appears on Pages 69 and 70 of the Printed Record in this cause, certified herewith.

[fol. 76] And on the same day, to-wit: On the twenty-eighth day of March, 1935, an Order was entered Allowing Appeal, which said Order is not copied here as the same appears on Page 71 of the printed record in this cause, certified herewith.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SETTING CAUSE, ETC.—March 28, 1935

It is ordered by the court that the transcript of the record in this cause be filed in this court within 10 days from this date; brief for appellant to be filed within 10 days thereafter; brief for appellee to be filed within 10 days thereafter, and that this cause be set down for hearing on May 22, 1935.

MEMORANDUM AS TO CITATION

And afterwards, to-wit: On the fourth day of April, 1935, there was filed in the office of the Clerk of this court, a Citation, which said Citation is not copied here as the same appears on Page 72 of the Printed Record in this cause, certified herewith.

[fol. 77] Bond on appeal for $250.00, approved and filed April 4, 1935, omitted in printing.

[fol. 78] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDDER APPROVING BOND—April 4, 1935

It is ordered that the bond on appeal, filed in this court in this cause this date, be, and the same is hereby approved.

[fols. 79 & 80] Appearances of counsel omitted in printing.

[fol. 81] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MINUTE ENTRY—May 22, 1935

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Don Kenneth Jones, counsel for appellants, and by Mr. Frank E. McAllister, counsel for appellees, and the court having heard the same takes this matter under advisement.

[fol. 82] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1934, APRIL SESSION, 1935

No. 5488

In the Matter of GRANADA HOTEL CORPORATION, Debtor

C. S. TUTTLE, ALBERT J. PETERSON, LEWIS W. RIDDLE, W. G. Sturm, and E. A. Kilmer, as Members of a Committee constituted under the terms of the Deposit Agreement dated April 28, 1933, etc., Appellants,

vs.

SAM HARRIS, J. ROSE and I. GORDON, Petitioning Creditors, Appellees

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

(Transferred from the Eastern District of Illinois)

OPINION—Filed June 5, 1935

Before Evans, FitzHenry, and Alschuler, Circuit Judges

Per Curiam:

Concededly there is but one question in this case and that is whether or not, at the time of the filing of the petition under section 77B of the Bankruptcy Act, there was "a prior proceeding in * * * equity receivership * * * pending". The record shows that, prior to the filing of this petition, a bill to foreclose had been filed in the state court by a second mortgagee under which a receiver had been appointed. While that case was pending, the trustee named in the first mortgage appeared in the state court and asked that court to enter an order directing its receiver to report to the trustee and turn over to it the possession of the mortgaged property. The state court entered the order, but the foreclosure case was still pending before the master at the time of the filing of the petition herein and jurisdiction over the property and the trustee remained with that court. This showing was sufficient to sustain the jurisdiction of the bankruptcy court under section 77B, Clark on

[fol. 83] Receivers, Sections 12, 13, 14 and 963, and the District Court so held.

The order of the District Court sustaining the petition is therefore affirmed.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

In the Matter of GRANADA HOTEL CORPORATION, Debtor

5488

C. S. TUTTLE, ALBERT J. PETERSON, LEWIS W. RIDDLE, W. G. Sturm and E. A. Kilmer, as Members of a Committee constituted under the terms of the Deposit Agreement dated April 28, 1933, etc.,

vs.

SAM HARRIS, J. ROSE and I. GORDON, Petitioning Creditors

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

(Cause transferred from the Eastern District of Illinois)

DECREE—June 5, 1935

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the Order or Decree of the District Court in this cause appealed from sustaining the Petition, be, and the same is hereby affirmed with costs.

[fol. 84] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION OF HARRIS F. WILLIAMS, AMICUS CURIAE—Filed June 20, 1935

To the Honorable Judges of said Court:

Comes now Harris F. Williams, as amicus curiæ, and petitioning this honorable court, respectfully shows the following:

1. That your petitioner is an attorney at law admitted to the bar in the state of Illinois and has been practicing law in the state of Illinois for many years last past and is admitted to practice in this honorable court.

2. That your petitioner is attorney for Lott Hotels, Incorporated, an Illinois corporation, debtor, against which corporation a petition has been filed and is now pending in the district court of the United States for the Northern District of Illinois, eastern division, numbered 56286 in [fol. 85] said court, which petition was filed against said Lott Hotels, Incorporated, in said district court under section 77B of the bankruptcy act as amended.

3. That in said proceedings against Lott Hotels, Incorporated, debtor, it appears that there are foreclosure proceedings pending against Lott Hotels, Incorporated, and against its properties in the circuit court of Cook county, Illinois, and that in said foreclosure proceedings, based upon the usual form of trust deeds securing bond issues, a receiver was appointed by the said circuit court of Cook county, Illinois, and that said receiver is in the possession of the property of the debtor as described in said trust deeds.

4. That it is the contention of the petitioners in the said proceedings in the said district court of the United States, wherein Lott Hotels, Incorporated, is debtor, that the said foreclosure receivership constitutes a prior equity receivership pending within the meaning of said section 77B of the bankruptcy act as amended, while it is the contentin of Lott Hotels, Incorporated, as represented by this petitioner, that the said foreclosure receivership does not constitute a prior equity receivership pending within the meaning of said section 77B of the bankruptcy act as amended, and that said question is jurisdictional under said section 77B as amended.

5. That the same question as to a prior equity receivership pending is involved in the above entitled cause, and petitioner is of the opinion that the opinion rendered by this honorable court in the above entitled cause under date of June 5, 1935, is erroneous.

6. Wherefore, petitioner prays that he may be allowed to appear in the above entitled cause, as a friend of the court,

and that he may be allowed to file a petition for rehearing, as amicus curiæ, within ten days in the above cause, and that petitioner may have such other and further relief as may be necessary or proper in the premises.

And petitioner will ever pray.

Harris F. Williams, Petitioner.

[fol. 86] *Duly sworn to by Harris F. Williams. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING, ETC.—June 20, 1935

Now comes Harris F. Williams and presents a petition for leave to file a petition for a rehearing in this cause as Amicus Curiæ.

On Consideration Thereof: It is ordered that the said petition be and it is hereby granted, and that the petition for a rehearing may be filed within 10 days from this date.

[fol. 87] Appearance of counsel omitted in printing.

[fol. 88] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION OF JOSEPH H. SCHWARTZ, AMICUS CURIÆ—Filed June 27, 1935

To the Honorable Judges of Said Court:

Now comes Joseph H. Schwartz, as amicus curiæ, and petitioning this honorable court, respectfully shows the following:

1. That your petitioner is an attorney at law admitted to the bar in the State of Illinois, and has been practicing

law in the State of Illinois for several years last past and is admitted to practice before the bar of this honorable court.

2. That your petitioner is a member of the law firm of Schwartz and Cooper, attorneys for the petitioning creditors who filed an involuntary petition in bankruptcy under Section 77B of the Acts of Congress relating to bankruptcy, as amended and supplemented, against Lott Hotels, Incorporated, an Illinois corporation, debtor, in [fol. 89] the District Court of the United States, for the Northern District of Illinois, Eastern Division, said cause being docketed as case #56286.

3. That it is alleged in the aforesaid involuntary petition for reorganization that there are proceedings pending against Lott Hotels, Incorporated, a corporation, in the Circuit Court of Cook County, Illinois, to foreclose the lien of trust deeds against its properties; that said foreclosure proceedings were instituted and a receiver appointed therein prior to the filing of said involuntary petition for reorganization; that said receiver is in possession of all or nearly all of the property of said debtor.

4. That it is the contention of the petitioning creditors who instituted the reorganization proceeding now pending in the District Court of the United States, as aforesaid, that said foreclosure receivership constitutes a pending prior equity receivership within the purview and meaning of Section 77B of the Bankruptcy Act, as amended and supplemented, which contention is controverted by the debtor therein; that the issue thereby created is jurisdictional under the aforesaid section of the Bankruptcy Act.

5. That a similar issue is involved in the above entitled cause and your petitioner believes that the opinion rendered by this honorable court in said cause under date of June 5th, 1935, is a correct exposition of the law in cases of this character and should be maintained upon the rehearing of this cause in order to protect vital interests of large classes of creditors.

6. Your petitioner further represents that Harris F. Williams, attorney for Lott Hotels, Incorporated, has filed

his petition with this honorable court as amicus curiæ, and was granted leave to file a petition for rehearing.

Wherefore, your petitioner prays that he may be allowed to appear in the above entitled cause as a friend of the court, and that he may be allowed to file a printed answer to the petition of Harris F. Williams within ten days after the petition of Harris F. Williams is filed, and that your petitioner may have such other and further relief as may be necessary or proper in the premises, and your petitioner will ever pray.

Joseph H. Schwartz, Petitioner.

[fol. 90] *Duly sworn to by Joseph H. Schwartz. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER GRANTING LEAVE TO FILE ANSWER TO PETITION FOR REHEARING, ETC.—June 27, 1935

Now this day comes Joseph H. Schwartz and presents a petition for leave to appear as Amicus Curiæ and file an answer to the petition for rehearing.

On Consideration Whereof: It is ordered that the said petition be, and it is hereby granted, and that the answer to said petition for rehearing may be filed within six days after the filing of said petition for rehearing.

[fol. 91] Appearance of counsel omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MEMORANDA RE PETITION FOR REHEARING

And afterwards, to-wit: On the twenty-eighth day of June, 1935, there was filed in the office of the Clerk of this

court, a Petition for a Rehearing by Amicus Curiae, which said Petition for a Rehearing is not copied here.

And afterwards, to-wit: On the third day of July, 1935, there was filed in the office of the Clerk of this court, an Answer to the Petition for a Rehearing by Amicus Curiae, which said Answer to the Petition for a Rehearing is not copied here.

[fol. 92] And afterwards, to-wit: On the eighth day of July, 1935, there was filed in the office of the Clerk of this court, an Answer to the Petition for a Rehearing by Appellee, which said Answer to the Petition for a Rehearing is not copied here.

And afterwards, to-wit: On the ninth day of July, 1935, there was filed in the office of the Clerk of this court, a Reply of Amicus Curiae to the Answer to the Petition for a Rehearing of Amicus Curiae, which said Reply is not copied here.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—July 26, 1935

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

MEMORANDUM RE ISSUANCE OF MANDATE

And afterwards, to-wit: On the thirtieth day of July, 1935, the Mandate of this court issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

[fol. 93] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

NOTICE—Filed Aug. 2, 1935

To Frank E. McAllister, 1 North LaSalle Street, Chicago, Attorney for Appellees:

You Will Please Take Notice that on August 2nd, 1935, the undersigned attorney for Appellants in the above entitled cause will, at the hour of ten-thirty o'clock in the forenoon of said day appear before the Hon. Samuel Alschuler, in his chambers in the Federal Building and present a motion to stay the mandate of the Circuit Court of Appeals for sixty days (60) pending the taking of the necessary steps to obtain a review and judgment of the Supreme Court of the United States.

Defrees, Buckingham, Jones & Hoffman, Attorneys for Appellants.

[fol. 94] Received a copy of the foregoing notice this — day of August, A. D. 1935.

Frank E. McAllister, Attorney for Appellees.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—Aug. 2, 1935

Now this day comes counsel for appellant and presents a motion for the recall and stay of the Mandate of this court, pending a petition to the Supreme Court of the United States for a writ of certiorari.

On Consideration Whereof: It is now here ordered that the Mandate in this cause be, and the same is hereby recalled and stayed until the further order of this court.

It is further ordered that counsel for appellant proceed with diligence and promptly file the petition for a writ of certiorari in the Supreme Court of the United States and,

upon the filing of said petition, file in this court proof of the filing of said petition in said court.

[fol. 95] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 96] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,982. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 428. C. S. Tuttle, Albert J. Peterson, et al., etc., petitioners, vs. Sam Harris, J. Rose and I. Gordon, petitioning creditors. Petition for writ of certiorari and exhibit thereto. Filed September 6, 1935. Term No. 428, O. T., 1935.